

TRIALS
FOR
High-Treason,
AND
OTHER CRIMES.
WITH
PROCEEDINGS
ON
Bills of Attainder,
AND
IMPEACHMENTS.

For Three Hundred Years Past.

To which are prefix'd,

A PREFACE, giving an Account
of the Nature and Usefulness of the WORK.

AND

An ALPHABETICAL TABLE of
the respective PERSONS Try'd, and the
Points of Law Debated and Adjudg'd.

*By the SAME HAND that prepared the Folio
Edition for the PRESS.*

PART II.

L O N D O N :

Printed for D. Browne, G. Straban, W. Mears, R. Gosling,
and F. Clay. M DCCXX.

T R Y A L S



OTHER CRIMES

WITH

PROCEEDINGS

ON

T R Y A L S

AND

IMPEACHMENTS

OF THE THREE HUNDRED AND FIFTY



A B R E V I A T E D

OF THE PROCEEDINGS

IN THE TRIAL OF JAMES DUFF
AND EARL OF CAMBRIDGE
HIGH COURT OF JUSTICE
IN THE TRIAL OF
THE TRIAL OF JAMES DUFF
AND EARL OF CAMBRIDGE

Printed for D. Browne, G. Newman, W. Moore, R. Collins,
and F. Galt.

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## VOL. I. PART II.

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*The Tryal of King CHARLES
the First, in the Month of Ja-
nuary, in the 24th Year of his
Reign, An. Dom. 1648.*

Vol. I.
Page 533.

IN order to the Tryal of King *Charles*; The Act for
the Commons pass'd an Act or Ordi-
nance for erecting an High-Court of
Justice; wherein they recite, that
the King, not being content with
the many Encroachments, made by
his Predecessors on the People's Rights, but design-
ing totally to subvert the Constitution, and intro-
duce an arbitrary Government, had levy'd War
against the Parliament; whereby infinite Murders
and Mischiefs had ensued: For which high and treaso-
nable Offences, he might long since have been justly
brought to condign Punishment, but that they had
forborn to proceed against him judicially hitherto,
hoping his Restraint would have quieted the Dis-
tempers of the Kingdom. But finding their Re-
misiness only encourag'd his Accomplices in their
evil Practices: for Prevention therefore of greater
Inconveniences, and to the End no chief Officers,

The TRIAL of

or Magistrate, might presume for the future to contrive the Enslaving and Destruction of the Nation with Impunity, they did ordain and enact, That

Thomas Lord Fairfax.	Henry Mildmay, Esqrs;
Oliver Cromwell.	Sir Thomas Honeywood, Kt.
Henry Ireton Esq;	Tho. Lord Grey of Grooby,
Sir Hardress Waller.	Robert Wallop,
Philip Skippon,	William Heveningham, Esqrs;
Valentine Wanton,	Isaac Pennington,
Thomas Harrison Esqrs;	Thomas Atkins,
Sir Henry Mildmay,	Rowland Wilson, Ald. of
Sir Thomas Wroth, Kts.	London.
Sir William Masham,	Richard Salwey,
Sir John Barrington,	Humphrey Salwey,
Sir William Brereton,	Robert Titchburn,
Sir Will. Constable, Barts.	Owen Roe,
Edmund Ludloe,	Robert Manwaring,
John Lambert,	Robert Lilburne,
John Hutchinson Esqrs;	Robert Duckenfield,
Sir Arthur Hazlerig,	Cornelius Holland,
Sir Michael Livesey, Barts.	John Carew,
Adrian Scroop,	John Nutt,
Richard Dean,	Thomas Challoner,
John Okey,	Algernoon Sidney,
Robert Overton,	John Anlaby,
John Hasen,	John Moore,
John Desborough,	Richard Darley,
William Goff,	Francis Lastels,
John Jones,	Alexander Rigby,
William Say,	Henry Smith,
John Alured,	Edmund Wild,
John Fagg,	James Challoner,
James Nelthrop, Esqrs;	Abraham Burrel,
Sir William Roberts.	Anthony Stapely,
John Fowkes, Ald. of Lond.	Roger Gratwick,
Thomas Scot, Esq;	John Downs, Esqrs;
Thomas Andrews, Ald. of	Philip Lord Lisle.
London.	William Lord Mounson.
William Cawley,	Sir John Danvers,
Edward Whaley,	Sir Tho. Maleverer, Barts.
Thomas Pride,	Sir John Bourchier,
Isaac Ewer,	Sir James Harrington,
Richard Ingoldsby,	Sir William Allanson,
	Sir Peter

Sir Peter Wentworth, Knt.
of the Bath.

Henry Martin,
William Purefoy,
Godfrey Bosvile,
John Trenchard,
John Blackistone,
Gilbert Millington, Esqrs;
Sir William Armyn, Bart.
Miles Corbet,
Francis Allen,
Thomas Lister,
Benjamin Weston,
Peregrine Pelham,
John Gourdon, Esqrs;
Francis Thorp, Serjeant at
Law.

Josias Berners,
Dennis Bond,
Humphrey Edwards,
Gregory Clement,
John Ery,
Thomas Wozan, Esqrs;
Sir Gregory Norton, Bart.
John Bradshaw, Serjeant
at Law.

Edmund Harvey;
John Dove,
John Ven,
Thomas Horton,

Thomas Hammond,
George Fenwick, Esqrs;
Robert Nicholas, Serjeant
at Law.

Robert Reynolds,
John Lisle,
Nicholas Love,
Vincent Potter, Esqrs;
Sir Gilbert Pickering, Bart.
Daniel Blaggrave,
John Brown,
John Weaver;
Roger Hill,
John Lenthall, Esqrs;
Sir Edward Eainton,
John Corbet,
Thomas Blunt,
Thomas Boon,
Sir Peter Temple Knt. and
Bart.

John Lowry, Esq;
Augustine Garland,
Augustine Skinner,
John Dixwell,
George Fleetwood,
Simon Meyne,
James Temple,
Peter Temple,
Thomas Wayte, Esqrs;

should be Commissioners and Judges for the Trying
of him, twenty of whom should be of *Quorum*:
And the said Thomas Lord Fairfax, and all other
Officers, Civil and Military, &c. were required to
be aiding and assisting to them in the Execution
of their Commission: Provided, that this Act, and
the Authority thereby granted, should continue in
Force for a Month, and no longer.

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Saturday, January 6, 1648. The Commons order-
ed that the Commissioners should meet on the Mon-
day following in the Painted-Chamber.

The first Meeting of the Commissioners.
Page 115.

Proclamation made by Sound of Trumpet of the holding of a Court in order to the King's Tryal

Council appointed for the Commonwealth.

Bradshaw chosen President.

Page 116.

Monday, January 8, The Commissioners being met, and call'd over, order'd, that a Court should be holden in the same Place on *Wednesday* the 10th of *January*: And that Proclamation should be made thereof by *Edward Dendy*, Serjeant at Arms, in *Westminster-Hall*; and accordingly on the ninth, Serjeant *Dendy*, being attended with six Trumpets, and two Troops of Horse, and being on Horse-back himself with his Mace, rode into the middle of the Hall, (the Court of *Chancery* being fitting) and made Proclamation, as he was commanded: And the House of Commons ordering he should proceed in the same Manner, and make the like Proclamation at the *Old Change*, and in *Cheapside*, he immediately went thither, and made Proclamation accordingly.

The Commissioners appointed Mr. *Aske*, Dr. *Dorris*, Mr. *Steel*, and Mr. *Cook* to be their Council, and Mr. *Greaves*, and Mr. *John Phelps* their Clerks.

Wednesday, January 10, 1648. The Court being set in the Painted-Chamber, they took into their Consideration the Order intended to be observed at the Tryal; and appointed Mr. *Edward Walford*, and Mr. *Vowel*, Ushers of the Court; and Mr. *Litchman* their Messenger. And they appointed *John Bradshaw*, Serjeant at Law, their President, who being absent, Mr. *Say* was appointed President till *Bradshaw* should attend: And Mr. *Greaves* being engaged in other Affairs of the Commonwealth, Mr. *Andrew Broughton* was appointed one of their Clerks in his Room. Then Mr. *Steel* and Mr. *Cook* were ordered to prepare and prosecute the Charge against the King; and a Committee was appointed to consider further of the Method of the Tryal.

Hitherto the Court having sat private, now ordered the Doors to be opened for all People to come in, and give their Attendance, who had any thing to do there.

Then three Proclamations were made, and the Act for constituting the Court read, and the Commissioners were call'd over; and Summons's ordered to be issued for all that were absent: And then the Court adjourn'd till *Friday* the 12th.

Friday,

Friday, Jan. 12, 1648. The Court being met, and Serjeant Bradshaw attending according to Summons, took his Place of President (having first made an Apology for himself, and desir'd to be excus'd.) And the Court order'd that he should be stil'd Lord President, as well without the Court as within, during the Continuance of their Commission. An Order also was made, that the Council assign'd to prosecute the Charge, should have Power to send for such Persons, Papers and Records as they should think requisite for the Service.

Order'd to be stil'd Lord President.

Sir Hardress Waller, and Coll. Harrison, were ordered to move the General for a sufficient Guard to attend the Court. And a Committee was appointed to make Preparations that the Tryal might be perform'd in a solemn Manner; with a Power to appoint Workmen, &c.

Some Matters ordered preparatory to the Tryal.

Ordered, That none of the Court do speak at the Tryal, but the Lord-President: That the Lord-President and Council manage the Tryal according to Instructions to be given them by the Court; and that the Committee for ordering the Tryal do consider of Rules and Instructions.

Ordered, That the Council do bring in the Charge against the King on Monday next.

Saturday, January 13, 1648. The Court sat private. Ordered, That the Serjeant at Arms search the Vaults under the Painted-Chamber. Ordered, That the Place for the King's Tryal shall be where the Courts of King's-Bench and Chancery sit in Westminster-Hall; and that the Partitions between the Courts be taken down.

Page 537.
A Search made under the Painted-Chamber to prevent their being blown up.

Monday, January 15, 1648. Fifty eighty Commissioners present; the Court sit private: The Council present a Draught of the Charge against the King, and a Committee are appointed to consider of it.

Wednesday, January 17. 1648. Fifty six Commissioners present. Ordered, That the absent Commissioners be summoned to give their Attendance.

Page 538.

Ordered, That Sir Robert Cotton's House be the Place where the King shall lodge during the Tryal; that the Chamber next the Study shall be his Bed-Chamber, and the Chamber before it his Dining-

Order'd that the King be at Sir Robert Cotton's House during the Tryal.

A 3

Room:

The TRYAL of

Room : And that a Guird of thirty Officers, and other choice Men, do always attend the King above Stairs ; and that two of the thirty always attend in his Bed-Chamber. Then they ordered other Guards to be placed at all the Avenues : And ordered, that the King should be brought to his Tryal the lower Way into *Westminster-Hall*, attended by his Guard above Stairs. They order'd Guards to be plac'd in the Hall, and upon the Leads, and at all Windows that look into the Hall ; and that there be a Guard of Horse without. — That all Back-doors from the House call'd *Hell* be stop'd up during the Tryal : That twenty Officers or Gentlemen attend the Lord-President to and from the Court : That Lodgings be prepared for the Lord-President at Sir *Abraham Williams's* House in the *New Palace Yard*, during the sitting of the Court ; and that all Provisions and Necessaries be provided for his Lordship. And a Committee was appointed to see all Provisions provided as well for the Lord-President, as the King, during the Tryal. That *John Humphreys Esq;* carry a Sword before the President ; and that a Mace or Maces be likewise carried before the President. — The Charge against the King, being presented by the Council, was ordered to be contracted ; and it was re-committed.

Thursday, January 18, 1648. The Court sit private : Col. *Titchburn* informs them that Mr. *Steel* was sick, and could not attend the Service of the Court : That the said Mr. *Steel* did not decline the Service out of any Disaffection to it ; but profess'd himself so clear in the Business, that if it should please God to restore him, he should manifest his Affection to the Cause : And that it was an Addition to his Affliction that he could not attend the Court, to do the Service they expected from him, and he desired to perform.

Friday, January 19, 1648. The Court sit private. Ordered, That three Gowns be provided for three Ushers, and three Cloaks for three Messengers of this Court. — The Charge being perfected was presented to the Court : And it was ordered that Mr. Attorney, and in his Absence Mr. Solicitor, should in behalf of the People of *England* exhibit

A Table appointed for the King, and another for the President.

Page 539.

and
ditto

and bring into Court the said Charge of High-Treason, &c. against Charles Stuart King of England.

Saturday, January 20. 1648. Ordered, That Sir Hen. Mildmay be desired to deliver unto John Humphreys Esq; the Sword of State, to be carried before the Lord-President. — Ordered, That the Method of Proceeding, as to Reading the Commission, sending for the Prisoner, and asking him Questions, &c. be left to the Discretion of the Lord-President: That if the Prisoner carry himself insolently, or contemptuously to the Court, it shall be left to the Lord-President to reprehend him, and admonish him of his Duty; or command him to be taken away; and, if he see Cause, to adjourn the Court. But as to the Prisoner's putting off his Hat, the Court will not insist upon it this Day; And if the King desire time, the Lord-President is to give him time. Ordered, That Mr. Lisle, and Mr. Say be Assistants to the Lord-President, and sit near him.

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Page 510.
The Sword of State carried before the President.

Assistants to the President

Mr. Solicitor presented the Charge against the King engross'd; and being read and sign'd by Mr. Solicitor, was return'd to him to be exhibited in open Court. And then the Court adjourn'd to the Place prepar'd for them in Westminster-Hall.

The Lord President, and the rest of the Commissioners, with the Officers of the Court, and one and twenty Gentlemen, with Partizans, and a Sword and Mace marching before them, came into the Hall: And the Lord-President plac'd himself in a Crimson Velvet Chair, provided for him in the midst of the Court, and the rest of the Members on each side of him on Benches hung with Scarlet; the Guard of Partizans dividing themselves on each side of the Court before them.

The Court set in order to the Tryal.

The Court being set, the great Gate of the Hall was open'd, and the Hall was immediately fill'd with a Multitude of People who came to be Spectators of the Tragedy. — Silence being commanded, the Act for erecting this High-Court of Justice was read, and the Commissioners Names were call'd over; of whom sixty seven appear'd and answer'd to their Names.

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The King is
brought to the
Bar.

Then the Serjeant at Arms was commanded to send for the Prisoner, and soon after Col. *Tomlinson* brought the King into the Hall, attended by Col. *Hacker*, and thirty two Officers, with Partizans ; The King's own Servants also attending him. The King being thus brought up in the Face of the Court, the Serjeant at Arms with his Mace received him, and conducted him to the Bar, where a Crim-son Velvet Chair was set for him.

After having looked sternly, or as another Author says, *Majestically*, upon the Court, and the Spectators, he plac'd himself in the Chair, not moving his Hat, or shewing any Respect to the Court : His Guards divided themselves on each side, and his own Servants stood on his Left Hand.

After Silence again commanded, the Lord-President address'd himself to the King, acquainting him, That the Commons of *England*, assembled in Parliament, being deeply sensible of the Evils and Calamities brought upon this Nation, and of the innocent Blood that had been spilt in it (of which the King was the principal Author) they had resolved to make Inquisition for this Blood ; and in Pursuance of what they owed to God, to Justice, the Kingdom, and themselves, and according to the Trust reposed in them by the People (other Means failing through his Default) they had resolv'd to bring him to Tryal and Judgment ; and had therefore constituted this Court of Justice, before which he was brought to hear his Charge ; upon which the Court would proceed according to Justice.

Hereupon Mr. Solicitor *Cook* offering to speak the King softly laid his Cane upon his Shoulder, bidding him hold : But the President bidding him go on, *Cook* did, in the Name of the People of *England*, exhibit a Charge of High-Treason, and other Crimes, against *Charles Stuart* King of *England* ; praying, that the Charge might be received and read, and due Proceedings had thereupon : And the Charge being delivered into the Court in Writing, was ordered to be read. The King interrupting the reading of it, the Clerk was commanded to go on ; and the King was told, if he had any thing to say, the Court would hear him after it was read.

The

The Charge sets forth, " That the said *Charles Stuart*, being admitted King of *England*, and therein trusted with a limited Power, to govern by, and according to Law; and by his Trust, Oath, and Office, being obliged to use the Power committed to him for the Good of the People, &c. yet out of a wicked Design to erect in himself, and his Family, a tyrannical Power, and to overthrow the Rights and Liberties of the People, he had traiterously and maliciously levy'd War against the present Parliament, and the People therein represented; particularly at *Beverley* in the County of *York*, on the 30th of *June* 1642; on the 24th of *August*, in the same Year, at *Nottingham*, when he set up his Standard there; on the 23d of *October*, in the same Year, at *Edge-Hill* and *Keynton Field*, in the County of *Warwick*; on the 14th Day of *June*, in the Year 1645, at *Naseby Field*, in the County of *Northampton*. [And at several other Times and Places in the Years aforesaid, in the Charge mention'd.] And at several other Times and Places in the Year 1646. Whereby the said *Charles Stuart* had caused many Thousands of the Free People of this Nation to be slain. And by Insurrections, Invasions, and other evil Ways, the said *Charles Stuart* had not only carried on the said War in the Years aforesaid, but had also caused the said War to be renewed against the Parliament, and good People of this Nation, this present Year 1648. By which cruel and unnatural Wars, by him the said *Charles Stuart* levy'd, continued and renewed, much innocent Blood had been spilt, Families ruin'd, Treasure wasted, Trade decay'd, and many Parts of the Land spoil'd and become desolate. And in further Prosecution of his said evil Designs, the said *Charles Stuart* did still continue his Commissions to the Prince, and other Rebels; to the Earl of *Ormond*, and the *Irish* Rebels associated with him; from whom further Invasions were threaten'd, upon the Procurement, and on the Behalf of the said *Charles Stuart*. All which Wars, wicked Designs, &c. were carried on to advance the personal Interest, Will, Power, and pretended

The Charge read.

Page 542.

“ pretended Prerogative of the said *Charles Stuart*,
 “ and his Family, against the publick Interest, Rights
 “ and Liberties of the People, by whom he was
 “ entrusted, as aforesaid.”

Therefore the said *John Cook*, saving (on the Be-
 half of the People of *England*) the Liberty of ex-
 hibiting any other Charge, &c. did for the said
 Treasons and Crimes, on the Behalf of the said
 People of *England*, *Impeach the said Charles Stuart*
as a Tyrant, Traitor, and Murderer, and a publick and im-
placable Enemy to the Commonwealth of England: And
 pray'd, that the said *Charles Stuart King of England*
 might be put to answer the Premisses; and such
 Tryal and Judgment might be had thereupon as
 should be agreeable to Justice.

The King did not appear to be mov'd at the
 reading of the Charge till they came to the Words
Tyrant, Traitor, &c. at which he laugh'd as he sat
 in the Face of the Court. (It was observ'd, that
 while the Charge was reading the Silver Head of
 his Cane fell off.)

The King de-
 mands by what
 Authority he
 was brought
 thither.

Page 543.

And refuses to
 acknowledge
 their Jurisdiction

The King's Answer being demanded by the Lord-
 President; the King demanded by what lawful
 Authority he was brought thither from the Isle of
Wight, where he was entered into a Treaty with
 the Parliament; and told them there were many
 unlawful Powers in the World, and instanc'd in
 that of Robbers, &c. He said he was their lawful
 King; he had a Trust committed to him by God,
 by old and lawful Descent, which he should not
 betray, together with the Liberties of the People,
 by answering to an unlawful Power, as that Court
 was.

The President answered, they sate there by the
 Authority of the Commons of *England*, as he might
 have observed from the Charge: How he had ma-
 naged his Trust was well known; but that it did
 not become him to interrogate the Court in the
 Condition he was.

The King told them, there was a God in Heaven
 that would call them to an Account for the Au-
 thority they had usurp'd: That it was as a great Sin
 to submit to an unlawful Authority, as it was to
 resist

refist a lawful Authority. That if they could satisfy the World of the Lawfulness of their Authority, they should receive his Answer.

Bradshaw answer'd, That in their Apprehensions, who were his Judges, their Authority was lawful.

King. 'Tis not your Apprehensions or mine that ought to decide that. He is remanded into Custody.

Then he was remanded into Custody again.

The King being withdrawn, the Court adjourn'd till Monday into the Painted-Chamber.

Monday, January 22, 1648. Painted-Chamber : Sixty two Commissioners present. Col. *Harvey* gave the Court to understand, that Mr. *John Corbet* (a Commissioner) desir'd his Absence might be excus'd, for that it did not proceed from any Disaffection to the Service; but in regard he was engag'd in other Affairs of the State.

Page 544.

Order'd, That if the King should again arraign the Jurisdiction of the Court, the Lord-President should let him know, that the Commons of *England* had constituted that Court, whose Power they would not admit to be disputed by him : And that if he refus'd to answer, or acknowledge the Court, his Contumacy should be recorded.

Then the Court adjourn'd into *Westminster-Hall*; and being set, the King was again brought to the Bar. — Mr. *Solicitor* mov'd, that the Prisoner might give a positive Answer to his Charge; or that the Court would take the Matter of it *pro Confesso*, and proceed thereupon according to Justice. The King still insisted, that neither the Court, nor the Commons of *England*, who constituted it, had Power to proceed against him; and desir'd he might offer his Reasons why they could have no Power over him. Upon which the Court having again requir'd his Answer, and the King still objecting to their Jurisdiction, his Contempt was recorded; and he was again remanded into Custody; and the King being withdrawn, the Court adjourn'd till Tuesday to the Painted-Chamber.

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Page 546.

The King brought to the Bar again, and offers to give Reasons against their Jurisdiction.

Which they refuse to hear.

Page 546.

His Majesty, not being suffered to give his Reasons against their Jurisdiction before their Court, thought fit to leave them in Writing; wherein he says, " That having already made his Protestations
" against

Page 547.
What he design'd to have spoke, if he had been permitted.

“ against the Illegality of the pretended Court,
 “ and shewn, *That they could not justly call him in*
 “ *question as a Delinquent who was their King*; he
 “ should not have said one Word more upon that
 “ Occasion, but that the Duty he ow'd to God,
 “ and his People, would not permit him to be si-
 “ lent: For no Subject could call his Life, or any
 “ thing his own, if Power without Right could
 “ make new, and abrogate the old Fundamental
 “ Laws of the Land. That he expected they
 “ should have given some Reasons to have support-
 “ ed their pretended Authority; but since they
 “ did not, he had this to offer against it.

Hereabouts he
 was interrupted,

“ That every Proceeding ought to be warranted
 “ either by God's Laws, or the Municipal Laws
 “ of the Country. As to the first: Obedience to
 “ Kings was strictly commanded both in the Old
 “ and New Testament. And as to the Law of
 “ the Land, no Impeachment could lie against the
 “ King; all Proceedings of that Nature being in
 “ his Name: And one Maxim of the Laws of *Eng-*
 “ *land* was, *That the King could do no Wrong*. That
 “ if their Proceedings were not warranted by any
 “ old Law, he desir'd they would shew what new
 “ Law their Authority was warranted by; for it was
 “ absurd to say, that the House of Commons, who was
 “ never possess'd of any Judicial Power themselves,
 “ could erect a Court of Judicature. And admit-
 “ ting (but not granting, that the People could de-
 “ legate that Authority to them) they could not
 “ shew that the Consent of a Tenth Part of the
 “ People of *England* was ever ask'd: And they
 “ could have no Colour for this Commission, unless
 “ they had the Consent of at least the major Part
 “ of the People of *England*, (of all Conditions.)
 “ That he did not forget the Privileges of Parlia-
 “ ment, which this Day's Proceedings did not only
 “ violate, but likewise occasion'd the greatest Breach
 “ of their publick Faith that was ever heard of;
 “ for that all the pretended Crimes laid against him
 “ were long before his Treaty with them in the
 “ Isle of *Wight*; where he having concluded every
 “ thing on his Part, and expecting the Ratification
 “ of the two Houses, he was suddenly surprized,
 “ and

" and hurried hither as a Prisoner. But he could
 " not charge this upon the two Houses in general ;
 " for the upper House he found was excluded, and
 " a Majority of the Lower House either detain'd
 " or deter'd from sitting. And this was Reason
 " sufficient (if he had no other) to protest against
 " their pretended Court. And as for Peace (which
 " they pretended to be their Aim) what Peace
 " could be expected while Power reign'd without
 " Rule or Law, and subverted the whole Frame
 " of that Government, which had flourish'd for so
 " many hundred Years ? That the Commons of
 " *England* would not thank them for this Change :
 " They would remember how happy they had been
 " under the Reign of Queen *Elizabeth*, the King his
 " Father, and himself, and might have Cause to
 " fear they should never be so happy under any
 " new Form. That it was now too evident, he
 " had taken up Arms to defend the Fundamental
 " Laws of this Kingdom, against those who would
 " totally change the antient Government. And that
 " having shewn them, why he could not submit to
 " their pretended Authority, he expected they
 " should offer some Reasons to convince him of his
 " Error, or desist from these Proceedings."

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Tuesday, January 23, 1648. Painted-Chamber.
 They resolve to try the King once more, if he will
 acknowledge the Jurisdiction of their Court ; but
 order the Lord-President, that in case he continue
 contumacious, to acquaint him, He is to expect no
 further time ; and that the Clerk be order'd in the
 Form prescrib'd to require his final Answer. Then
 the Court adjourn'd into the Hall, where seventy
 one Commissioners were present.

The King being brought to the Bar again, Mr. *Solicitor Cook*, shewing his former Delays and Con-
 tempts, said, That nothing more remain'd now but
 to demand Judgment : But that notwithstanding
 these Contempts, and the Notoriety of the Facts
 charg'd, he would proceed to examine Witnesses
 as to the Truth of them, if requir'd.

The King a
 third time
 brought to the
 Bar.

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 Page 517.

The Court also put the King in Mind what for-
 mer Proceedings had been ; and told him, that al-
 though

though they might take Advantage of his Contempts, and immediately pronounce Judgment upon him ; yet they once more gave him an Opportunity of answering the Charge ; and told him he must answer in plain Terms (for they said Justice knew no Respect of Persons) if he was Guilty or Not Guilty.

Page 550.
Refuses to own
their Authority.

His Contempt
recorded a third
time.

The Witnesses
examin'd by a
Committee.

Page 551.
Page 515.

The King refusing to acknowledge their Jurisdiction as formerly, and observing also, That he had done nothing against the great Trust God had committed to him : The President told him, that he had now a third time publickly disown'd and affronted the Court : And how he had preserv'd the Laws and Liberties of the People his Actions best spoke : He had written his Meaning in Characters of Blood throughout the Kingdom. And the Clerk being order'd to demand a peremptory Answer to the Charge in the Form prescrib'd : And the King refusing to answer, his Contempt was again recorded, and he was remanded into Custody. And the Court adjourn'd to the Painted-Chamber ; where they resolv'd, that notwithstanding these Contempts and the Notoriety of the Facts charg'd, they would examine Witnesses to give the greater Satisfaction ; and Warrants were issued out for summoning of Witnesses : And then the Court adjourn'd till next Morning.

Wednesday, January 24, 1648. Painted-Chamber. Resolv'd, That the Witnesses should be examin'd in the Painted-Chamber ; and a Committee were appointed to take their Examinations ; after which the Court adjourn'd till the next Morning.

The Dean of
Westminster's
House furnish'd
for the President

Thursday, January 25, 1648. Painted Chamber. The Court sat private. Order'd, That the Dean's House in *Westminster-Abbey* be furnish'd for the Lodging of the Lord-President, his Servants, Guards, and Attendants.

The Witnesses
attest their De-
positions in
Court.

The Witnesses who had been examin'd by the Committee the 24th, were this Day sworn again in Court, and their Depositions were read to them ; and they did severally attest the Truth of their respective Depositions.

Mr. Holder being brought from *Whitehall*, where he was a Prisoner, to give Evidence against the King, desir'd

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desir'd to be excus'd. And the Court finding he was already a Prisoner, and his Examination would tend to accuse himself, they wav'd it.

The Depositions taken against the KING.

Page 552.

William Cuthbert, of *Holderness* in the County of *York*, Gent. saith, That upon the second of *July* 1642, being *Lord's-Day*, he saw a Troop of Horse, call'd the Prince's Troop, come to *Beverley*: That the same Afternoon they march'd to *Holderness*, where they receiv'd Ammunition brought up the River *Humber*; and that the same Night 300 Foot call'd the King's Guards, under the Command of Col. *Duncomb*, came to *Holderness* to this Deponent's House (call'd *Hull-Bridge*) about Mid-night, and broke it open, and possess'd themselves of the said House. And that the same Night the High-Sheriff brought a Warrant (which Col. *Duncomb* gave this Deponent, being Constable) for staying all Provisions from going to *Hull* to Sir *John Hotham*. That the Thursday following, the King came to *Beverley*, where the Deponent often saw him with Prince *Charles* and the Duke of *York*; and that the Train'd-Bands were rais'd at *Holderness*, as was generally reported, by the King's Command. And the Deponent further saith, that the breaking into his House on the Sunday Night was the first Act of Hostility committed in these Parts. [Qu. If it does not appear by his Deposition that Sir *John Hotham* had then seiz'd *Hull* for the Parliament?] And he further deposes, that the Deponent himself was had before the Earl of *Lindsey*, then the King's General, for holding Correspondence with Sir *John Hotham*.

The Evidence against the King.

Hostilities begun between the King and Parliament.

John Bennet, of *Harwood* in the County of *York*, *Glover*, depos'd, That about *Midsummer* was fix Years, the King's Standard was set up at *Nottingham*; and that he saw the King in the Castle within two or three Days after it was set up. And that the Regiment the Deponent belong'd to, of which Sir *William Pennyman* was Colonel, had then their Colours given them; as had the Earl of *Lindsey*'s Regiment; and the Earl was then proclaim'd General: And it was also proclaim'd at the Head of every Regiment

The King's Standard set up at Nottingham.

War proclaim'd
against the Par-
liament; and
the Earl of Ef-
sex and Lord
Brook pro-
claim'd Trai-
tors.

Page 553.

Evidence of the
King's being at
Edge-hill.

Regiment; in the King's Name, That the said Forces should fight against all who should oppose the King or his Followers; and particularly against the Lord *Effex* and Lord *Brook*, who were proclaim'd Traitors: And that these Proclamations were printed and dispersed through every Regiment. That the Deponent took up Arms to prevent being plunder'd; for Sir *William Pennyman* gave out that it were a good Deed to fire the Town, because they refus'd to enter into the Service: And that divers others did take up Arms for the King for fear of being plunder'd. That the Deponent saw the King sitting on Horse-back at *Edge hill* in *October* 1642: And that he spoke to the Colonel of every Regiment as they pass'd by, that they should encourage their Soldiers to stand to it against the Lord *Effex* and Lord *Brook*, Sir *William Waller* and Sir *William Balfour*. That the Deponent saw many slain at *Edge-hill* Fight; and by a List brought to *Oxford* it appeared there were 6559 slain.

That in *November* 1642, the Deponent saw the King at the Head of his Army at *Hounslow-Heath*, and Prince *Rupert* standing by him; and that he heard the King say to several Regiments of *Welch*, who run away at *Edge-hill*, That he hop'd they would regain their Honour at *Brentford*.

William Brayne, of *Wixhall* in the County of *Salop*, Gent. depos'd; That about *August* 1642, he saw the King at *Nottingham*, his Standard being then up: That he march'd with the King to *Derby*, and in *September* the same Year was try'd as a Spy at *Shrewsbury*, before Sir *Robert Heath*, and other Commissioners of Oyer and Terminer.

Henry Hartford depos'd, That he saw the King with his Forces at *Nottingham* in the Year 1642: And that he saw him on the Sunday Morning after the Fight at *Brentford*, on Horse-back, in that Town, many of the Parliament's Forces being kill'd there the Day before.

Robert Lacy depos'd, That he painted the Pole on which the King's Standard was put at *Nottingham*; and that the King lay at the Earl of *Clare's* House in that Town.

Edward

Edward Roberts, of *Bisbop's-Castle* in the County of *Salop*, depos'd, That he saw the King with his Forces at *Nottingham*, *Edge-hill*, and *Brentford*.

Robert Loads depos'd, That he saw the King in the Rear of his Army in *Keynton* Field, where many were kill'd, in the Year 1642 ; and that he saw the King with his Army near my Lord *Mobun's* House in *Cornwal*, about *Harveft* 1644.

Samuel Morgan depos'd, That he saw the King at *Edge-hill* in 1642 ; and that he saw him also in the Year 1644 at *Cropredy-Bridge*, where he did light off his Horse, and draw up the Body of the Army himself.

Evidence of the King's drawing up his Army himself.

James Williams depos'd, That he saw him with his Forces at *Keynton* Field, and at *Brentford*.

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John Pyneger depos'd, That in *August* 1642, the King's Standard was up at *Nottingham* ; and that the King had a Train of Artillery there.

Samuel Lawson, of *Nottingham*, *Malster*, depos'd, That about *August* 1642, he saw the King's Standard brought out of *Nottingham* Castle, borne on divers Gentlemen's Shoulders (reported to be Noblemen ;) that it was carried up the Hill, adjoining to the Castle ; a Herald going before it : And it was erected on the Hill with great Shoutings, and with Sound of Drums and Trumpets, the King being present. That when the King with his Forces march'd out of Town, the Inhabitants were forc'd to pay a great Sum ; and were threatned to be plunder'd in case they refus'd.

Of the Manner of erecting the King's Standard at *Nottingham*.

Arthur Young, Citizen and Barber-Surgeon of *London*, depos'd, That he took the King's Standard at *Edge-hill*, but that it was taken from him again by one *Middleton*, who was afterwards made a Colonel.

The Standard taken and retaken at *Edge-hill*.

Thomas Wittington depos'd, That he saw the King at *Nottingham*, when his Standard was set up in the beginning of *August* 1642.

John Thomas depos'd, That he saw the King in the Action at *Brentford*.

Richard Blomfield depos'd, That about the latter end of *August* 1644, at the Defeat of the E. of *Essex's* Army in *Cornwal*, he saw the King there on Horseback at the Head of his Army near *Foy* : And that

The TRIAL of

the Earl's Soldiers were plunder'd contrary to Articles there lately made.

William Jones depos'd, That he saw the King marching at the Head of his Army to *Naseby* Field; and that the King rode up to Col. *St. George's* Regiment, and ask'd, if they were willing to fight for him; and the Soldiers answer'd with great Acclamations, crying, *All, All*. That the Deponent saw the King at *Leicester* the same Day his Forces had taken it; and that he saw the King in the Army when they besieged *Gloucester*.

Humphrey Brown depos'd, That about *June 1645*, when *Leicester* was taken by the King's Forces, *Newark* Fort by *Leicester* surrender'd upon Condition to have their Cloaths, Money, &c. And that notwithstanding they were strip'd, beaten and wounded by the King's Soldiers: And an Officer of the King's rebuking his Soldiers for it; the King reply'd, *I don't care if they cut them three times more, for they are my Enemies*. And that the King was then on Horseback in *Leicester*, in bright Armour.

David Evans depos'd, That in *June 1645*, he saw the King marching to *Naseby* Field at the Head of his Army about half an Hour before the Battel began.

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Diogenes Edwards depos'd, That he saw the King marching to *Naseby*, and saw many kill'd there.

Giles Grice depos'd, That he saw the King with his Sword drawn in the Fight against Sir *William Waller* at *Cropredy-Bridge*, being in *July 1644*; That he saw him the same Summer about *Lestisbiel* in *Cornwall*, when the Earl of *Essex* was there. That he saw the King at *Naseby* with Back and Breast on; and saw him at the second Fight at *Newberry*, and at the Storming of *Leicester*.

John Vinson depos'd, That he saw the King at the first Fight at *Newberry* *September 1643*. That he saw him at the second Fight at *Newberry* about *November 1644*. That he saw him lead up Colonel *Howard's* Regiment of Horse there, and tell them, That they must stand by him that Day, for his Crown lay upon the Point of the Sword; and if he lost that Day, he lost his Honour and his Crown for ever. That he saw

saw the King, after his Forces were routed at *Naseby* in *Northamptonshire*, rally the Horse himself, and cause them to stand.

Evidence of the King's rallying his Forces, and making them stand after they were routed.

George Seely depos'd, That he saw the King at the Siege of *Gloucester*, and in both the Fights near *Newberry*.

John Moore depos'd, That he saw the King at the last Fight at *Newberry*, at *Cropledy-Bridge*, at *Leicester*, and at *Naseby*; in which Battels abundance of Men were kill'd.

Thomas Ives depos'd, That he saw the King at the first Fight of *Newberry*, and at *Naseby*.

Thomas Rawlins depos'd, That he saw the King near *Foy* in *Cornwal*, about *July 1644*: And that he saw some Soldiers of the Parliament's plunder'd by the King's Party, contrary to Articles, not a great Distance from the King's Person.

Thomas Read depos'd, That soon after the laying down of Arms in *Cornwal*, between *Lestithiel* and *Foy*, he saw the King at the Head of a Guard of Horse.

James Crosby depos'd, That he saw the King at the first Fight at *Newberry*.

Samuel Burden depos'd, That he saw the King's Standard at *Nottingham*, about the Month of *August 1642*: That he saw the King at *Cropledy-Bridge*, in Pursuit of *Sir William Waller's* Army, which was then routed: And that he saw the King at the last Fight at *Newberry*, riding from Regiment to Regiment, while they were engaged with the Parliament's Forces.

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Michael Potts deposed, That he saw the King near *Newberry*, both before and after the first Fight there; and that he saw him in the Head of his Army at the second Fight: That he saw the King at *Cropledy-Bridge*, and near *Lestithiel* in *Cornwal*, where the Earl of *Effex* lay with his Forces in Harvest 1644.

The King rides from Regiment to Regiment, at the Fight at *Newberry*.

George Cornwall depos'd, That he saw the King draw up his Forces at *Cropledy-Bridge*.

Henry Gooche, of *Gray's Inn* in the County of *Midlesex*, Gent. deposed, That about the 30th of *September* last he had Access to his Majesty in the Isle of *Wight*, and told him that he had many Friends; and that since his Majesty was pleased to justify

Evidence of some Transactions between the King and some pretended Friends during the Treaty in the Isle of *Wight*.

the Parliament's first taking up Arms, most of the Presbyterian Party, both Soldiers and others, would stick close to him. The King answer'd, That he would have all his old Friends know, that though for the present he was contented to give the Parliament Leave to call their own War what they pleased, yet that he neither did at that time, or ever should decline the Justice of his own Cause.— That the Deponent then told the King, that his Business was much retarded; for that neither Col. Thomas, nor any other, could proceed to Action for want of a Commission. And the King answer'd, he being upon a Treaty would not dishonour himself; but that if the Deponent would go to the Prince his Son, he, or any for him, should receive what Commissions they desir'd: That he would order the Marquess of Hertford to write to his Son in his Name; and that the King express'd much Joy that his good Subjects would engage themselves for his Restauration.

Robert Williams depos'd, That he saw the King near *Lestibiel*, marching at the Head of his Army in Armour, with a short Coat over it unbutton'd; and that he saw the King drawing up his Army at *St. Austell Downs*: And that he saw him at the Head of his Army near *Foy*; and that the Earl of *Essex* then lay within a Mile and a half of the King's Army.

Richard Price, of *London*, Scrivener, depos'd, That the King's Agents about *London* tampering with the Independents, to draw them off from the Parliament Party, it was discover'd: And the Committee of Safety directed those who were tamper'd with, seemingly to comply with the King's Agents: And that the Deponent having obtain'd a safe Conduct under the King's Hand and Seal, waited on the King at *Oxford* in *January* 1643, to treat with his Majesty about the Business. And that the King declared to the Deponent, that he had found the Independents the most active Men in the Kingdom for the Parliament against him, and perswaded the Deponent to expedite the bringing them over; and for their Encouragement, his Majesty promis'd upon the Word of a King, That if they would come over,

The Independents betray the King's Officers to them.

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over, and be as active for him against the Parliament, as they had been against him, he would grant them whatever Freedom they could desire. And then his Majesty refer'd the Deponent to the Earl of *Bristol* for the further Prosecution of the Affair. That the Earl directed the Deponent to let the Independents know, that the King's Affairs prospered well in *Ireland*; that his *Irish* Subjects had given the Rebels (meaning the Parliament's Forces) a great Defeat: That the Lord *Byron* had a considerable Army before *Namptwich* in *Cheshire*, which would be strengthen'd with more Forces that were daily expected out of *Ireland*. That when the Deponent left *Oxford* he had four Safe Conducts, with Blanks for inserting what Names the Deponent pleas'd; and that one *Ogle* was sent out of *Oxford* with the Deponent to treat about delivering up *Aylesbury* to the King.

Then several Letters and Papers of the King's were produc'd as Evidence against him; but the Publishers of this Tryal have not thought fit to give us Copies of them, or to let us know the Purport of them.

Letters produc'd in Evidence, but not publish'd in the Tryal.

The Witnesses being examin'd, the Court still sat private, and came to the following Resolutions.

That they would proceed to Sentence of Condemnation against *Charles Stuart King of England*; that he should be condemned as a Tyrant, Traitor and Murderer, and a publick Enemy to the Commonwealth of *England*; and that this Condemnation should extend to Death. And that the Draught of a Sentence, grounded on the said Votes, should be prepar'd by a Committee appointed for that purpose; who were to leave a Blank for the manner of the King's Death. Then the Court adjourn'd till the next Day.

Some Resolutions previous to the Sentence.

Friday, January 26, 1648. Painted-Chamber. The Court sat private: And a Draught of a Sentence being produc'd; after several Debates about it, and some Amendments made, it was ordered to be engross'd. And it was resolv'd, that the King should be brought into the Hall the next Day to receive his Sentence.

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Page 515.

B ;

Saturday,

The TRYAL of

Saturday, January 27, 1648. Painted-Chamber.
Resolv'd, That the Lord-President do manage what Discourse shall happen between him and the King, according to his Discretion, with the Advice of his two Assistants: That the Lord-President should hear the King say what he would before Sentence, but not after. That after reading the Sentence the Lord-President should declare, That the same was the Sentence and Judgment of the whole Court: And that the Commissioners should thereupon signify their Consent by standing up. Then the Court adjourn'd to *Westminster-Hall*, where sixty seven of the Commissioners appear'd, (*viz.*)

John Bradshaw, President.	John Jones,
John Lisle,	Miles Corbet,
William Say,	Francis Allen,
Oliver Cromwell,	Peregrine Pelham,
Henry Ireton Esqs;	Daniel Blagrove,
Sir Hardress Waller.	Valentine Wanton,
Sir John Bourchier,	John Downs,
William Heveningham,	Thomas Horton,
Isaac Pennington, Ald. of	Thomas Hammond,
London.	Nicholas Love,
Henry Martin,	Simon Meyne,
William Purfoy,	Thomas Wayte,
John Berkstead,	Thomas Harrison,
Matthew Tomlinson,	Edward Whaley,
John Blackstone,	Thomas Pride,
Gilbert Millington, Esqrs;	Isaac Ewers, Esqrs;
Sir Will. Constable, Bar.	Tho. Lord Grey of Grooby,
Edmund Ludloe,	Sir John Danvers,
John Hutchinson Esqrs;	Sir Tho. Maleverer, Barts.
Sir Michael Livesey, Bar.	John Moore,
Robert Titchburn,	Vincent Potter,
Owen Roe,	Augustine Garland,
Robert Lilburne,	John Dixwell,
Adrian Scroop,	George Fleetwood,
Richard Dean,	Peter Temple,
John Okey,	John Alured,
John Hujon,	Henry Smith,
William Goff,	Humphrey Edwards,
Cornelius Holland,	Gregory Clement,
John Carw,	Thomas Wogan, Esqrs;

Sir

Sir Gregory Norton, Bart.
Edmund Harvey,
John Ven,
Thomas Scot,

Tbo. Andrews, Ald. Lond.
William Cawley,
Anthony Stapeley,
James Temple, Esqrs;

The King being brought to the Bar again (having his Hat on as usual) some of the Soldiers began to call out *Justice, Justice, and Execution!* But Silence being commanded, his Majesty desir'd to be heard; which the President told him he should before the Sentence pronounc'd, but he must hear the Court first. Then the President said, that the Prisoner had several times been brought before the Court to answer a Charge of High Treason, &c. exhibited against him in the Name of the People of England: [Here a Lady cry'd, *Not Half the People of England*] but being silenc'd, the President went on, and recited the Proceedings that had been had; that the Prisoner had refus'd three several Days to answer or own them as a Court; and that his Contumacy had been thrice Recorded; and that the Court, that they might not be wanting to themselves, had Resolv'd upon a Sentence then ready to be pronounc'd against the Prisoner; but in regard of his Desire to be further heard, they were ready still to hear him in any thing relating to his Defence, but they should not suffer any thing to be offer'd against their Jurisdiction.

The King answer'd, that since they wou'd not admit of it, he should wave saying any thing farther to their Jurisdiction, tho' he thought the settling of that most conducive to the Peace of the Kingdom, and the Liberty of the Subject: That if he had had a greater Regard to his Life, than to the Peace of the Kingdom and the Liberty of the Subject, he should have made a particular Defence for himself; for by that means he might at least have delay'd an ugly Sentence, which he believ'd wou'd pass upon him. He told them, that an hasty Sentence once pass'd might sooner be repented of, than recall'd; and therefore (more for the Kingdom's sake than his own) he desir'd he might be heard in the Painted Chamber before the *Lords and Commons*, before they proceeded to pass

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The King brought to the Bar again to receive Sentence.

The President's Speech before the Sentence is interrupted by a Lady.

The King permitted to speak before the Sentence.

Desires to be heard before the Lords and Commons.

Sentence ; that this was but a small Delay, and he might offer such Reasons, as might conduce to the Peace and Welfare of the Kingdom ; he therefore again conjur'd them, if they had that Regard to the Welfare of the Kingdom as they pretended, that he might be heard there before Sentence pass'd.

One of the
Members of the
Court expresses
some Reluc-
tance.

Page 259.
He is deny'd a
Hearing before
the Lords and
Commons.

Page 263.

Conjures them
to consider of
his Request once
again.

The President answer'd, that this was still a declining the Jurisdiction of the Court, and tended only to Delay ; however since he press'd it so much, they would withdraw, and consider of his Proposal ; and accordingly they withdrew into the Court of Wards. [Nalson says, they withdrew to prevent a Disturbance from one of their own Members, Col. John Downs, more than out of Regard to the King ; for Downs observing his Majesty press so earnestly for a short Hearing, could not stifle the Reluctance of his Conscience, and began to be troublesome ; but that having us'd some Threats and Reproaches to harden him to go through the Remainder of their Villany with them, they return'd.] The King being again brought to the Bar, the President told him, that they were Judges appointed by the highest Authority ; and that Judges ought no more to delay, than to deny Justice, according to the old Charter ; and that it was their unanimous Resolution, that they should proceed to Judgment, without any further Delay.

The King answer'd, that he should not dispute their Power ; he knew they had Power enough, but it might have been much for the Kingdom's Peace, if they would have taken the Pains to have shewn the Lawfulness of their Power : He confess'd, that what he desir'd might give some Delay, but it was a Delay very important for the Peace of the Kingdom ; said, that he must lay all the ill Consequences of a hasty Sentence at their Doors, if they refus'd to let him be heard ; that he doubted not, if he might be heard before the Lords and Commons, he should give some Satisfaction to the Commissioners, as well as to his People ; and therefore he requir'd them, as they would answer it at the dreadful Day of Judgment, that they would consider of it once again.

The

The President reply'd, that they had already consider'd of his Proposal, and must give him the same Answer they had done before; and that they were ready to proceed to Sentence, if he had nothing more to say.

Which they refuse.

The King said, he desir'd that what he had said might be enter'd.

Then the President discours'd of the Legality of their Proceedings, and instanc'd in several successful Rebellions in this and other Countries, which he apprehended were good Precedents for their proceeding in this Manner, and concluded, that the King was guilty of the whole Charge.

The King desir'd he might be heard as to those great Imputations laid to his Charge, but was told, his Time was pass'd; he had refus'd to own them as a Court, and they knew what Language they receiv'd from his Party; and that it was not proper for him to address himself to them, since he refus'd to acknowledge their Jurisdiction: That they had given him too much Liberty already, and admitted of too much Delay, and would not admit of any further. Then the President advis'd him to reflect on the Greatness of his Sins, and hop'd the Consideration of them would produce a serious Repentance, and pray'd that God would have Mercy on his better Part: That for the other they must do their Duty, nor being unmindful of the Scripture, which says, *That to acquit the Guilty is as great an Abomination, as to condemn the Innocent*; and therefore that he must now hear that Sentence which the Law requir'd should be pass'd upon a Traytor, Tyrant and Murderer, and a publick Enemy to his Country.

The President advises his Majesty to be penitent, and prays for his Soul.

Then the Sentence, being engross'd in Parchment, was read by the Clerk; being to this Effect.

" That whereas the Commons had by their late Act, entituled, &c. Authoriz'd and Constituted them an High Court of Justice for the Trying and Judging of *Charles Stuart*, King of *England*, for his Treasons, &c. By Virtue whereof the said *Charles Stuart* had been three several times convented before them, and refus'd to answer the Charge

The Sentence.

" Charge exhibited against him : [*Here the Charge is recited.*] And they being satisfied in their Consciences, as well from the Notoriety of the Fact, as by Examination of Witnesses, that the said Charles Stuart hath been guilty of the wicked Designs and Endeavours in the Charge set forth ; and that he hath been, and is, the Occasion, Author, and Continuer of the said unnatural, cruel, and bloody Wars ; and therein guilty of High Treason ; and of the Murders, Rapines, Burnings, Spoils, Desolations, Damages and Mischiefs to this Nation, acted and committed in the said Wars, *They do adjudge that He, the said Charles Stuart, as a Tyrant, Traytor and Murderer, and publick Enemy to the Good People of this Nation, shall be put to Death by the severing his Head from his Body.*

The Sentence being read, the President added, *The Sentence now read and publish'd is the Act, Sentence, Judgment, and Resolution of the whole Court.*

Whereupon the whole Court stood up to express their Assent, as had been before agreed.

The whole Court rise up to express their Assent.

They refuse to hear him speak after Sentence.

Page 564. Some Indignities offer'd to his Majesty by the Soldiers.

His Majesty offering to speak, they refus'd to hear him, and commanded him to be taken away. [*Nelson adds, that as his Majesty went down the Stairs, the Soldiers blew their Tobacco in his Face, which was very distasteful to him, and one of them spit in his Face, which his Majesty took no other notice of, than to wipe it off ; and that as he went along, they cry'd out Justice, Justice ! which his Majesty observ'd they would have done for their own Commanders for a piece of Money.*]

Page 567.

The Court being return'd to the Painted Chamber, appointed a Committee to consider of the Time and Place for executing the Sentence upon the King, and then adjourn'd till the next Morning.

He is permitted to see his Children, and Bishop Juxon, who preaches before him.

In the Evening a Member of the Army acquainted the Committee, that his Majesty desir'd, since Sentence of Death had pass'd upon him, that he might see his Children ; and that Dr. Juxon, the Bishop of London, might be admitted to assist him in his private Devotions, and receiving the Sacrament ; both which were granted : And the next Day being Sunday he was attended by the Guard to St. James's,

St. James's
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St. James's, where the Bishop preach'd before him on this Text: *In the Day when God shall judge the Secrets of all Men by Jesus Christ, according to the Gospel.*

Monday, Jan. 29. 1648, Painted Chamber, forty eight Commissioners present, the Committee for considering of the Time and Place for the Execution having made their Report, the Court agreed with them, and every one present sign'd the following Warrant, and set their Hands and Seals to it; viz.

The Warrant
for the King's
Execution.

" Whereas Charles Stuart, King of England, is and
" standeth convicted, attainted, and condemned of
" High Treason, and other High Crimes; and
" Sentence upon Saturday last was pronounc'd a-
" gainst him by this Court, to be put to Death, by
" the Severing of his Head from his Body; of
" which Sentence Execution yet remaineth to be
" done: These are therefore to will and require
" you to see the said Sentence executed in the
" open Street before Whitehall upon the Morrow,
" being the Thirtieth Day of this Instant Month
" of January, between the Hours of ten in the
" Morning and five in the Afternoon of the same
" Day, with full Effect: And for so doing this
" shall be your sufficient Warrant. And these are
" to require all Officers, Soldiers, and others the
" good People of this Nation of England, to be
" assisting unto you in this Service.

To Col. Francis Hacker, Col. Hunks,
and Lieuten. Col. Phray, and to
every of them.

Sign'd and Subscrib'd by

Page 565.

John Bradshaw,
Thomas Grey,
Oliver Cromwel,
Edward Whalley,
Michael Livesey,
John Okey,
John Danvers,
John Bourchier,

Henry Ireton,
Thomas Maleverer,
John Blackstone,
John Hutchinson,
William Goff,
Thomas Pride,
Peter Temple,
Thomas Harrison,

John

John Huson,
Henry Smith,
Peregrine Pelham,
Simon Mayne,
Thomas Horton,
John Jones,
John Moor,
Hardress Waller,
Gilbert Millington,
George Fleetwood,
John Alured,
Robert Lilburne,
William Say,
Anthony Stapely,
Richard Deane,
Robert Titchburne,
Humphrey Edwards,
Daniel Blagrove,
Owen Roe,
William Purefoy,
Adrian Scroop,
James Temple,

Augustine Garland,
Edmund Ludlow,
Henry Martin,
Vincent Potter,
William Constable,
Richard Ingoldsby,
William Cawley,
John Berkstead,
Isaac Ewers,
John Dixwell,
Valentine Wanton,
Gregory Norton,
Thomas Challoner,
Thomas Wogan,
John Venn,
Gregory Clement,
John Downs,
Thomas Wayte,
Thomas Scot,
John Carew,
Miles Corbet.

Some Dissent-
ing Teachers
order'd to attend
the King in his
last Moments,
but he refuses
to be troubled
with them.

The King is
executed.

30 Jan. 1648. Painted Chamber: Order'd by the Commissioners, that Mr. *Marshal*, Mr. *Nye*, Mr. *Caryl*, Mr. *Salway*, and Mr. *Dill*, be desired to attend the King to administer those Spiritual Helps as should be suitable to his present Condition.

Col. *Goff* reported, that the King being acquainted therewith, he desir'd not to be troubled with them.

Order'd, that the Scaffold, upon which the King is to be executed, be cover'd with Black.

The King was executed, according to the Tenour of the abovesaid Warrant, about two a Clock in the Afternoon on the Thirtieth of January.

Mr. Solicitor *Cook* having prepar'd a Speech to be deliver'd before the High Court of Justice, in case the King had pleaded; which is bound up with the Tryal, it may not be unacceptable to the Reader to give him the Substance of it. And in the first Place he takes upon him to shew, That this Court was erected for the most glorious piece of Justice,

Justice, that ever was acted on the Theatre of England. That it was for the trying of Charles Stuart, whom God had given in his Wrath to be a King of this Nation; and whom he hop'd, in great Love to them, God would now be pleas'd to take from them again, for his Blood-guiltiness, &c. One, whom tho' he had made this Island an Akeldama, was so heard-hearted, that he profess'd he was not troubled for any of the Blood that had been shed, unless for one Man's (meaning *Strafford's* he suppos'd.) Then he goes on and asserts, That the Kings of England were trusted but with a limited Power; and that there was a vast Difference between Kingly Power limited by Laws, and the Power of those Princes that were absolute, as in Spain and Turkey, &c. That by the Laws of England, the King could not impose any thing upon the People, or take the Value of a Farthing from them, but by their own Consent; nay, that the King had not the Power of a Justice of Peace, he could not commit a Man to Prison for any Offence whatever; and if he should send a Messenger to bring a Man before him, and Violence were used by the Messenger to compel the Man to come, the Law would justify the Person in knocking the Messenger on the Head — And to him he said it appear'd, that from the Beginning the King design'd to subvert the Fundamental Laws, and introduce a tyrannical Government, by his causing the Coronation Oath to be alter'd; tho', if there had been no Oath, by the special Office and Duty of his Place, he was oblig'd to act for the good of his People, and was not impower'd to do any thing tending to their Destruction. That for Kings to rule by Lust, and not by Law, such, indeed, might be call'd Gods on Earth, but 'twas in no other Sense than the Devil is call'd the God of this World: That the Scripture in 1 Sam. 8. gives us a Description of an absolute Tyrant, and a People that were absolute Slaves; that the Scripture did not show us there what a good King ought to do, but what a wicked King would presume to do, when it says, *He would take their Sons and appoint them for himself, for his Chariots, &c.* Besides, *Saul and David* had

Mr. Solicitor
Cook's Speech.

Ours a limited
Monarchy,
where the King
can take no-
thing from the
Subject without
his Consent.

Page 522.

The King can
only employ
his Power for
the Good of the
People.

ex-

All just Power
deriv'd from the
People.

Conquest and a
long Descent
can give no
Title.

The Oaths of
Allegiance and
Supremacy not
binding to the
Subject.

Absolute Mo-
narchs permit-
ted by Provi-
dence as the
Plague, but
'twas lawful
for their Subjects
to break their
Yoke.

Page 522.

Charges the
King as an Ac-
complice with
the Duke of
Buckingham, in
poisoning his
Father King
James

extraordinary Callings; but *all just Power is now deriv'd from and confer'd by the People.* That Nimrod, and the first four Monarchs were all Tyrants, as were all other Princes who claim'd by Conquest, till the People's subsequent Consent; and tho' they might shew a long Descent, it was but the Continuation of a Conquest. That till the People consent and voluntarily submit to a Government, they are but Slaves, and might free themselves if they could. Then Cook addresses himself to the Royalists, and bids them not so misconstrue the Oaths of Allegiance and Supremacy, as to think they had sworn thereby to give the King leave to cut their Throats; for the meaning of them was no more, than that the King was supreme in this Land, in opposition to the Pope, or any other Prince or Potentate: And 'twas true, in case of an Invasion, he was to be Generalissimo, and to command the People for their own Safety; but for such Princes as the *Turk*, the *French King*, and the *Spaniard*, who govern'd arbitrarily, they reign'd but by the permissive Hand of Providence, as Plagues and Famine, to be a Scourge to those Nations, untill God should open a way for them to enfranchise themselves.

Then he mentions again the King's altering his Coronation Oath, his dispensing with the Knights Attendance of his Coronation, and afterwards levying great Sums on them for their Neglects: He says also he alter'd the Judges Commissions, and gave them but *during Pleasure*, when they us'd to be for *Life*; and by that means it came to pass, that the Judges who purchas'd their Places were under a Necessity of declaring the Law to be what the King thought fit.

But that which he said principally shew'd the King's Design of altering the Constitution, and introducing an arbitrary and tyrannical Government from the Beginning, was his disuse of Parliaments, which never had been call'd but when his Necessities compel'd him to it.

Then he says, that when the Earl of *Bristol* prefer'd a Charge against the Duke of *Buckingham*, his Majesty, in Favour of the Duke, immediately dis-

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solv'd the Parliament, and thereby prevented the Duke's being call'd in question for the poisoning his Father King *James*, from whence he labours to insinuate that his Majesty was concern'd in the Death of the King his Father; and then he goes on and expatiates on the Barbarity and monstrous Impiety of such a Fact.

He adds, That by the Judgment the King procur'd in the Case of Ship-money, he made his People absolute Slaves, and himself an absolute Tyrant; for if the King might levy Money on the People in case of Necessity, and himself was to be Judge of that Necessity, then no Man could say he was worth six Pence.

With levying Ship-money, under a Pretence of Necessity.

And whereas it was said, that his Judges and evil Counsellors (and not the King) ought to be responsible for all such Injustice and Male-Administration: He said they were his own Creatures, and every Man ought to be accountable for the Work of his own Hands: And besides, that the Fines coming into his own Coffers, it must be presum'd that he consented to the Judgment.

The King answerable as well as his Ministers for Male-Administration. Page 524.

Then he charges the King with introducing the *English* Liturgy in *Scotland*, and his endeavouring to enslave that Kingdom, which he said gave Rise to the *Scotch* War: And he also charges his Majesty as the Author of the Massacre of the Protestants in *Ireland*.

Charges the King as the Author of the *Scotch* War. And of the Massacre in *Ireland*.

And next he proceeds to give an Account of the Reasons which induc'd his Majesty to make War upon his *English* Subjects.

And of the Civil War in *England*.

First, He said his Majesty fought for the absolute Command of the Militia by Sea and Land; and if this was his Right, then, he said, he might command all the Money in the Nation, for he that carried the Sword would command the Purse.

That the King insisted on commanding the Militia. Page 525.

Secondly, That he fought for a Power of calling and dissolving Parliaments when he pleas'd, and for a Power of refusing Bills when they were offer'd him for a Redress of Grievances, by saying when the Lords and Commons were both agreed that he would *advise*; and how this Expression of *advising* came of late to be construed a Denial he knew not; for at first it signified no more than

On a Power of dissolving Parliaments, and of refusing Bills.

than the allowing him two or three Days to consider of the Equity of the Bill; and then if he could not convince the Houses of the Injustice of it, he was, by his Oath and the Law, to consent to it.

On a Power of making new Lords and new Corporations.

Thirdly, He fought for the Prerogative of making what Lords he pleas'd, and what Towns he pleas'd Corporations, so that he might fill both Houses with his Creatures; and if this pretended Prerogative were legal, then the Nation could not be more effectually enslav'd than by Parliaments, and their boasted Privileges were a meer Mockery.

On a Power of pardoning and suspending Execution.

Fourthly, Another pretended Prerogative he fought for, was that of pardoning all Offences; so that when the Judges would not acquit an Offender on the King's Intimation, which could be but seldom (they holding their Places at his Pleasure) the Channels of Justice might be entirely stop'd, by a Pardon or Suspension of the Sentence, and then in vain was the Judgment given.

On a Power of raising or lowering the Coin.

Fifthly, A fifth Prerogative he contended for, was the enhancing or debasing of the Coin, which must render every Man's Property very uncertain and precarious; for if the King could make six Pence pass for twenty Shillings, or reduce twenty Shillings to six Pence, how could any Man tell what he was worth?

Of avoiding his Grants.

Sixthly, Another Prerogative, was the avoiding his Grants, by pretending they were not made according to his Intention; and here he arraigns the Resolution in the Case of *Alton Wood, Co. 1. Rep.* and all other Resolutions of that kind; and this he calls a legal Theft; giving the King a Power, which no Man ought to have, of avoiding his own Grants.

Page 526.

That if the King has these Prerogatives, he is an absolute Tyrant, and this the worst Tyranny, as being establish'd by a Law. But that indeed his Prerogative did not extend much beyond the Privileges of the meanest Subject.

He says, if we allow the King these Prerogatives, we establish in him the most perfect Tyranny; and that by a Law which is the most insupportable of any; but that the Truth was, these were but Usurpations and Encroachments on the Peoples Rights and Liberties, for that the Law of *England* did not allow the King any Prerogative beyond the meanest of his Subjects, but in three Cases; *First*, In Matters of Honour and Preeminence to his Person, and in Matters of Interest; that he should have

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have Rbyal Mines, viz. of Gold or Silver, in whose Land soever they were; and Fishes Royal, such as Sturgeons and Whales; and of having Tythes where a common Person might not challenge them. *Secondly*, In having his Patents freed from Deceit, that he should not be deceiv'd or cozen'd in his Contracts. *Thirdly*, His Rights were to be freed from Incurfion of Time, and were not bound by any Statute of Nonclaim; *And, indeed, he thought Possession a vain Plea, when a Matter of Right was in question, for Right can never die.*

Possession gives
no Title: Right
can never die.

He adds, That the King might also have some other honourable Privileges, such as mending his Plea, or suing in what Court he would, which were not prejudicial to the People; but that a King of England should be invested with those exorbitant Prerogatives abovemention'd, and not be accountable for his wicked Actions and Male-Administrations, was most irrational and absurd to imagine; and yet these were his Grounds for making War, as the King himself had often declar'd.

As to what was objected, That the King could not be adjudged guilty of Murder, in raising Forces against the Parliament; because there was no other way of determining the Differences between him and his Subjects but by the Sword, for the Law could not judge between two Supreme Powers; and if there was only a contending for each others Right, where was the Malice which was necessary to constitute a Murder?

He answer'd, That there could no more be two Supreme Powers in one Nation, than two Suns in one Firmament; and to say they were co-ordinate Powers, was as absurd as the other; and that tho' the Commons had sometimes waited on the King, and allow'd him a Negative, in Matters of small Moment, yet in Matters that related to the Constitution, such as the Militia, &c. if the King refus'd to comply with them, they were bound in Duty to settle it themselves: Nor could it be suppos'd a People should consent to take one for their King upon other Conditions (and without their Consent no Man ever had Right to wear the Dia-

Two Supreme
Powers or two
Co-ordinate
Powers can't be
in one Nation.

dem) Conquest, indeed, makes a Title amongst Wolves and Bears, but not amongst Men.

The People may take Measures for their Defence without the King, if he refuses to concur with them : And they are Judges what tends to their Advantage or Destruction.

That if the King refus'd to give his Assent to a Bill for the Safety of the Nation, they must not sit still and see themselves ruin'd ; they must and would save themselves, whether he would or no : And a Prince must not pretend to say *That* is for the People's Good, which they *see and feel* to be for their *Hurt*. And as for the *Malice*, the Law implied that, as it did when a Thief sets upon a Man to rob him, and Money was the real Inducement ; so here, where the King would kill the People, unless they would be Slaves, Malice was implied.

If it were ask'd by *what Law the King is condemn'd*.

Page 127.
That was agreeable to the Fundamental Constitution of all Kingdoms, that where the King becomes a Tyrant he shall die for it.

He answer'd, By the Fundamental Law of this Kingdom, and the Law of Nations ; That it was a Law that need not be express'd, *That if a King became a Tyrant he should die for it*. This was naturally implied : If the Pilot of a Ship was drunk, or running upon a Rock, and the Passengers could not otherwise prevent it, they might throw him into the Sea to cool him. That when an Army is committed to a General, tho' it is not with an express Condition that he shall not turn the Mouths of his Canon upon his Soldiers, yet this was necessarily implied ; and if he did attempt or command any thing against the nature of his Trust, he did *ipso facto* reinstate the Army in a Right to Disobedience, unless any one would affirm they were oblig'd in Duty to cut their own or their Companions Throats. And when a King, who is intrusted to fight the People's Battles, and procure their Welfare, shall prevaricate, and act to the enslaving or destroying of the People, who are his *Liege Lords* ; this was High-Treason with a Witness, and far more transcendent than that of conspiring the Death of the Chief-Magistrate, for that he (*the King*) was paid for his Service ; and the Dignity of his Person increas'd the Offence. That God's People made shorter Work with *Rehoboam* ; they never petition'd, but advis'd him ; and on his refusing their Counsel, they cry'd, *To your Tents O Israel* : But they (the Parliament) in imitation of

The People his Majesty's Liege Lords.

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God Almighty, had waited with great Patience to bring him to Repentance; and for him not only to set up a Standard of War, in defiance of his Dread Sovereign the People (for so they truly were in Nature, tho' Names had befool'd us) but to persist so many Years in his cruel Persecutions, who with a Word of his Mouth might have made Peace: If this were not a superlative Treason, let Indians judge.

Treason to set up his Standard against his dread Sovereign the People.

As to that Maxim in the Law, *That the King can do no Wrong*; this, he said, was blaspheming against the Great God, for he only could not err: Indeed he acknowledg'd that there was a Resolution in Henry VII, by the Chief-Justice; *That if the King kill a Man; 'tis no Felony, to make him suffer Death.* This, he said, was to be understood in ordinary Courts of Justice; but there was no doubt but the Parliament might try the King, or appoint others to judge him. And in the 43d of Edw. III. 22. it is resolv'd that all manner of Actions did lie against the King; and that in the 24th of Edw. III, Wilby, a learned Judge, said that there was a Writ *Præcipe Henrico Regi Angliæ.* Indeed Edw. I. did make an Act of State that Men should sue to him by Petition, but this was not agreed to in Parliament, *Thelwall, tit. Roje. Digest of Writs 71.*

Page 528.

Possibly, he said, that Case in Hen. VII might prove, that if the King should in his Passion kill a Man; this should not be Felony to take away the King's Life; because the Inconveniency might be greater to the People, to put the King to Death for a single Offence, than the executing him could be an Advantage to them: But this did not prove that it was not High-Treason to make War against the Parliament; or that they were bound to stand still and suffer a Monster to cut their Throats at his Pleasure.

If the King kills a Man 'tis no Felony in him.

Then he again charg'd the King with the Irish Massacre (where he asserted that 152000 Men, Women and Children were murder'd:) said that the King never so much as call'd them Rebels, but in those 40 Proclamations which were extorted from him by the Importunity of the Parliament; but that the Scots were declar'd Rebels, and a Prayer

Page 529.

enjoin'd to be read in all Churches against them, before they had kill'd a Man.

The King
charg'd with
betraying
Rochel and the
French Pro-
testants.

Page 530.

Page 531.

The King of
great Learning
and Dexterity
in State Affairs,
and not to be
seduc'd by his
Council.

Says the inno-
cent Blood of
three Kingdoms
demanded
Justice against
him.

He is troubl'd
for the King's
eternal Condi-
tion, and prays
for the poor
Wretch.

The next thing he charges the King with, is the betraying *Rochel*, and the Protestant Party in *France*, to the *French King*, when he had promis'd them his Assistance; and says, he verily believ'd the King lov'd a Papist better than a Puritan.

He says, he was once of Opinion that the King was seduc'd by evil Counsellors; but since the Letters taken at *Naseby*, it was apparent he was too politick and subtle a Man to be sway'd by any thing but his own Judgment; and that he had more Learning and Dexterity in State Affairs than all the Kings in Christendom: That if he had had Grace answerable to his strong Parts, he had been another *Solomon*: That he was now fully convinc'd that none of his Council durst advise him to any thing but what they knew before he resolv'd to have done: That they did but hew and square the Timber, he was the Master Builder, that gave the Form to the Architecture.

From all which Premises, he demanded and pray'd the Justice of that High-Court; and added, it was not he, but the innocent Blood of three Kingdoms that demanded Justice against him, which spoke much louder than the Blood of *Abel* (for what proportion had the Blood of *Abel* to the Blood of so many Thousands) that this Blood had long cry'd, *How long Parliament, how long Army, will ye forbear to avenge our Blood? Will ye not do Justice on the Capital Author of all Injustice? When will ye take the proud Lion by the Beard, that defies you with impetuous Exaltations? What's the House of Commons? What's the Army? As Pharaoh said, Who is the Lord? and who is Moses? I am not accountable to any Power on Earth.*

But still Cook said he was troubl'd in Spirit, in regard of the King's eternal Condition, for fear he should depart this Life without Love and Reconciliation to the Saints, whom he had scorn'd, under the Notion of Presbyterians, Independents and Sectaries. That indeed he lay under an insupportable Weight of Sins; but they were not more

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more than an infinite Mercy might pardon; and therefore his Prayer for the poor Wretch should be, that God would so give him Repentance unto Life, that he might believe in Christ whom he had imprison'd, persecuted and murder'd in the Saints; and that he who had liv'd a Tyrant, and hated nothing so much as Holiness, might die a Convert, and in love to the Saints of England, for the Saints must judge the World. And however he and his Adherents might think it a brave Roman Spirit, not to repent of any thing, and took more Care not to change their Countenances upon the Scaffold, than what should become of them after Death; yet he beg'd leave to tell *Charles Stuart*, and all Malignants then living; that unless they departed this Life in Love and Reconciliation to those Saints, there was no more Hopes of seeing God with Comfort, than of the Devil's being sav'd; which he might be, if he could love a Saint as such.

Page 532.
Is concern'd
that the Cava-
liers behave
themselves so
bravely at their
Execution.

Cook adds, as to his own Part, he bore no more Malice to the Man than to his Father; but he hated that cursed Principle of Tyranny he had so long harbour'd, and which had turn'd their Waters of Law into Blood; and therefore he hop'd that High-Court, which was the Habitation of Justice, and Principles of Freedom, would do speedy Justice; that his honourable Clients, the People of England, might drink abundantly of that Well of Liberty, which this renown'd Army had dig'd with their Swords: That it was the Hopes of this, that made himself so readily hearken to the Call to this Service, as if it had been immediately from Heaven, being fully satisfied that the Prisoner was long since condemn'd by God's Law; and that this High-Court was but to pronounce the Judgment given against him in Heaven.

And he desir'd to observe, to the Glory of God's great Name, that he had had much of God's gracious Assistance and Presence, in the Management of this Prosecution, which he look'd on as a Return of Prayer and Fruit of his Faith, believing that God never fail'd to act in things so pleasing to him, as this great Act of Justice was. That when he

Says God had
afforded him
great Assistance
in the Manage-
ment of this
Prosecution
against his Ma-
jesty.

The TRYAL of

has mov'd for Judgment against a Felon he has trembled; but now he was of another Temper; it was Meat and Drink to good Men to have Justice done, and their Recreation to think what Benefit the Nation would receive by it.

That the Vices
of all Tyrants
center'd in his
Majesty.

And therefore
he demands
their Justice.

That other
Kings might
hear and fear,
&c.

And now he says, he must conclude this Prisoner Guilty of more transcendent Treasons and enormous Crimes than all the Kings in this Part of the World had ever been; and that truly to delineate this Tyrant, he must put together all the Vices that ever were separately in any that sway'd the *English* Scepter, for they all conspir'd together to take up their Habitation in this whited Wall; and therefore he humbly prays, that as this King has made himself a Precedent, in committing such horrid Acts, as former Kings and Ages were not acquainted with, but were afraid to think of, that they would, out of their sublime Wisdoms, for Justice sake, make him an Example for other Kingdoms for the time to come, *That the Kings of the Earth might hear and fear, and do no more so wickedly.*

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The Tryal of JAMES Duke of Hamilton, and Earl of Cambridge, for High-Treason. Before the High-Court of Justice, February 9, 1648.

The Charge for
levying War in
behalf of the
King against
the Kingdom
and People of
England.

The Duke's
Plea.

THE Charge sets forth, That the Earl of Cambridge [the Duke] about the 19th of July last, did traiterously invade this Kingdom, and levied War in behalf of the King, against the Kingdom and People of *England*, committing many Outrages, Murders, &c. and particularly about the 20th of *August* last, did join Battel, and fight with the Forces of the Parliament, near *Preston*, and did then and there murder Col. *Thornby*, and others.

The Earl took Notice that he was better known by another Title than that of Earl of *Cambridge*, and put in the following Plea, viz. That he undertook this Command by the Authority of Parliament, the

Supreme

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Supreme Power of the Kingdom of *Scotland*, for justifiable Ends, and not derogatory to the Peace and Happiness of these Dominions. 2. That he was born in *Scotland* before his Father's Naturalization in *England*, and so was an Alien, and could not be try'd in *England*. 3. That he was not only a Prisoner of War, but surrender'd upon Articles to those who were commission'd by Major-General *Lambert*, by which Articles his Life and Person were secur'd.

The Duke desir'd time to send for his Witnesses, and other Evidences, to make good the Facts contain'd in his Plea; but was denied, and he was order'd to be brought before the Court again the next Day.

Moves for time to send for his Witnesses, but deny'd.

Saturday, February 10, His Grace being brought to the Bar again, mov'd, that he might have Council assign'd him, which was granted, and he was ordered to appear again the 13th.

Tuesday the 13th, His Grace mov'd for further time, shewing, that no Council would be concern'd for him without the special Order of the Court. Whereupon Mr. *Clute*, Mr. *Hales*, Mr. *Parsons*, and Dr. *Walker*, were assign'd his Council, and order'd that they should have free Access to him in the Presence of his Keepers.

Council assign'd him.

Saturday, February 17, His Grace being brought to the Bar (his Council being near, but not present) he produc'd Duplicates of his Commission, and his Orders from the Parliament of *Scotland*, and the Committee of Estates there; which were prov'd by Mr. *Lewis* his Grace's Servant. And the Declaration containing the Ends of the Engagement was in like manner prov'd and read.

Then the Court, at his Grace's Request, caused the Original Articles of Capitulation to be read, which Mr. *Cole* prov'd were delivered to his Grace about nine in the Morning before the Lord *Gray* came up.

The Lord *Gray* depos'd, That two several Summons's, which he sent to his Grace to yield to *Merry*, were both answer'd in the Negative, in respect of the Cessation and Treaty: That the Deponent was commanded by *Cromwell* to pursue the Scotch Forces with Vigour; but he received Let-

Evidence of the Duke's surrendering upon Articles, one whereof was, That his Life should be secured.

ters from the *Staffordshire* Gentlemen, importing, that they had agreed to a Cessation to gain time, in order to strengthen themselves, in regard the Scots were so numerous: And that the Deponent dispatch'd away *Wayte* and *Peters* that Morning, in which the Treaty was concluded, to protest against it.

Peters depos'd, That he saw my Lord *Gray's* Summons, and his Grace's said Answer to them; and that *Wayte* and he were upon the Way to the Place of Treaty, to protest against it by my Lord *Gray's* Order, when he heard the Articles were concluded.

Lilburne was call'd.

The Commissioners depose they intended only to secure his Life from the Soldiers, and not from the Civil Power.

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He depos'd, That the Articles were sign'd by himself about five in the Morning, and were to be ratified by the Duke and *Lambert*. But as to that Part of the Articles concerning the saving the Duke's Life, he meant no more but he should be preserved from the Violence of the Soldiers, and not from the Justice of the Parliament.

Here *Peters* rose up, and express'd great Detestation at the Interpretation *Lilburne* put upon the Articles; and said, it was clear, by those Articles, the Duke's Life was secur'd as well from the Parliament as the Soldiers; and wish'd to God if the Commissioners had meant otherwise, it had been so express'd in the Articles.

The President answer'd, You say well for the future, but 'tis now too late.

The Governor of *Windsor* Castle was call'd.

The Governor of *Windsor* Castle deposes that the Duke made his Escape, though he had given him his Honour he would not attempt it.

He depos'd, That his Grace bid him not fear his Escape, for he would be a true Prisoner, tho' the Gates were set open.

The Duke highly resented this Assertion as absolutely false; and reflecting upon his Honour, and said that he was guarded with all the Strictness imaginable; and that the Governor's Evidence ought not to be receiv'd in his own Case, to excuse his own Neglect; and added, that he understood the Governor had been told, that if he escap'd the Governor should die for it; and further, that if his Grace had not been a Prisoner, he should have demanded Satisfaction of the Governor for the Scandal.

Then

Then his Grace observ'd, that Capitulations had been always held inviolable by all Princes and States, as well with their Subjects, as Independent Nations: That Prince Robert, and the Lord Corrington, though excepted from Pardon by Ordinance of Parliament, were notwithstanding, upon the Articles for the Surrender of Oxford, permitted to go beyond Sea, without being question'd: As were the Earl of Bristol and Lord Pawlet, upon the Articles for the Surrender of Exeter, tho' both were excepted from Pardon. That the Lord Fairfax, and the other Officers of the Army, had always carefully observ'd all Articles of Capitulation, as judging their Honour concern'd, and had frequently written to the Parliament on that Subject; and his Grace hop'd he should meet with the like Justice that others had.

Monday, February 19, 1648. The Duke being brought to the Bar again,

Colonel Wayte was call'd.

He depos'd, That his Grace surrender'd himself Prisoner to the Lord Gray, and desir'd the Depo-
nent to protect him from the Multitude; and that he left a Guard with him thereupon.

Peters being examin'd again; as also Spencer and several other Officers, depos'd, That Wayte's Deposition was entirely false: And that the Duke became my Lord Gray's Prisoner, by an Agreement between Lambert and my Lord Gray, Lambert being oblig'd to move Northward. Then the Court adjourn'd to the 21st.

Wednesday, February 21. A Witness was examin'd to prove that the Duke was born after King James came to the Crown; but the Witness depos'd only that he heard his Grace say he was some Years younger than King Charles I. Evidence was also produc'd of his Grace's joining Sir Marmaduke Langdale.

Here his Grace observ'd, that he was not prov'd *post natus*, and aver'd, that Sir Marmaduke Langdale neither receiv'd Orders, or the Word from him, but march'd, and quarter'd apart; and had it been otherwise, it could not be Criminal in his Grace, being commanded by the Parliament of Scotland.

Scotland to join with all who would concur with him in prosecuting the Ends of the Engagement : Nor could this be Treason in his Grace, even in the Opinion of the Parliament of *England*, who had pass'd a Vote, and set a Sum of 100,000 *l.* for his Ransom, as the Price of his Liberty ; by which it appear'd that they look'd on him not as a Traitor, but as an Enemy, whose Life had been granted by Articles of Capitulation.

Thursday, February 22. His Grace being brought to the Bar, pray'd, that an Order of Parliament might be read, made four Years since, importing, that no Quarters should be given to any of the *Irish* in Arms, from whence he infer'd that others might have Quarter : And another Order of the 14th of *July* last was also read at his Request, which declares all the *Scots* who entred *England* to be Enemies, and all the *English* and *Irish* who join'd them, Traitors.

Upon the whole, his Grace observ'd, that having his Birth, Honour, and Fortune in *Scotland*, he was bound to give Obedience to their Orders, and undertake the Charge of General for Purposes which he conceived lawful : That in some Papers publish'd by the Parliament of *England*, against that Expedition, they declared they look'd upon it as a National Breach ; so that it was no private Act of his. That the entering of the *Scotch* Army into *England* in 1640, was not accounted treasonable, but was acceptable to this Kingdom, who then gave them their brotherly Assistance ; and the late unfortunate Army was design'd for as good Ends. That he was born before his Father's Naturalization, and so could have no Benefit by it ; and his being an *English* Earl did not naturalize him ; for he might probably have been expel'd the House of Peers, as his Countryman Mr. *Walter Stuart* was the House of Commons : That *Lambert* was a General-Officer, and sufficiently impower'd to treat with him, being commission'd to capitulate both by the Parliament and *Cromwel* : That Articles were to be expounded according to the plain Meaning of the Words, and not by the pretended mental Reserves of the Commissioners, especially in

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in a Case of Life ; and even by the first Article he was a Prisoner of War, whose Lives are usually saved, though nothing further were stipulated. That if these Articles were violated, and the War should be reviv'd, it would prove a perfect Butchery, since none would ever for the future trust to a Capitulation : That his Escape out of Prison was no Breach of the Articles, they requiring only that he should deliver himself up a Prisoner, not that he should remain so.

Monday, February 26, 1648. His Grace being brought to the Bar, the other two Officers who sign'd the Capitulation, being sent for out of the Country, came into Court, and depos'd as Lilburne had done ; That by the Article for preserving the Duke's Life, they only intended that he should be preserved from the Violence of the Soldiers, and not from the Justice of the Parliament.

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Then his Grace's Council were permitted to speak to the Matter of Law ; and they insisted that his Grace's Obligation, and Subjection to the Kingdom of Scotland, was indispensable and indissoluble ; and that he could no more refuse the Commands of that Kingdom, than a Native of England, living here, could disobey the Commands of this Parliament ; That no Man could be a Subject of two Kingdoms ; and whatever Obligations his Grace might have to England, they could not come in Competition with what he ow'd to Scotland : That it was a Maxim in Law, *Major Relatio trahit ad se minorem* ; and that *Jus Originis nemo mutare potest*.

The Duke's Council speak to the Matter of Law.

That no Treason could be without a Breach of Faith and Allegiance due to them against whom it was committed. Now these were two distinct Kingdoms ; and though the Allegiance due to the King was the same in both Kingdoms, yet that due to the Kingdoms was distinct ; and the actual Administration of the Kingdoms was not in the King when the Duke undertook this Employment. Therefore as the Duke's Allegiance to the Kingdom of Scotland was antienter, and stronger than any Tie that lay on him in England ; what he did by the Command of the Scotch Nation might make

They urge that the two Kingdoms were independent ; and the Duke being a Native of Scotland could not be a Traitor to England.

make him an Enemy to this Kingdom, but could not denominate him a Traitor. [*This Argument drawn from the Allegiance due to the Kingdom was spoken ad hominem.*] That no Case could be cited where one born in another Independent Kingdom, and acting by a Commission from that Kingdom, and residing there when he receiv'd his Commission, and raising the Body of his Army in that Kingdom, and coming into this in an open, hostile Manner, was ever adjudg'd guilty of Treason, and Naturalization was intended as a Benefit, and not a Snare. That when *France* and *England* were under one Sovereign, divers of each Nation were naturaliz'd in the other; yet when Hostility broke out betwixt them, many so naturalized fought on the side of their Native Kingdom, for which none were put to Death as Traitors, when taken Prisoners. And when the Constable of *France* was taken Prisoner by *Edward III.*, who claim'd *France* as his Right, he was not try'd or put to Death, but sent back to *France* as a Native of that Kingdom. And when *David Bruce* King of *Scotland* invaded this Kingdom, though Endeavours were us'd to find a legal Ground for his Tryal in *England*, as being Earl of *Huntington*, that Matter was wav'd, although King *Edward* claim'd a kind of Homage from the Crown of *Scotland*. As for the Duke's Father's Naturalization: Indeed, by the 25th of *Edw. III.*, Children born without the Kingdom, whose Parents were then in the King's Allegiance, were Denizons; yet the Duke being born before his Father's Naturalization, this could not reach him, none of his Children born before having the Benefit of it. Nor would the Duke's making use of the Assistance of some *English* Forces make him a Traitor: Indeed, if an *Englishman* conduct a foreign Army, or a Foreigner assist an *English* Rebellion, it is Treason in either; for the Act of such an Alien is denominated from the Crime of those he assists here, where he owed a local Allegiance; as was the Case of *Shirley* the *Frenchman*, and of *Lopez*: But where an Alien comes with foreign Force, though he use *English* Auxiliaries, he is an Enemy, and not a Traitor. And this was the Case of the Lord

Harris

*Harris a Scotchman, 15 Eliz. and of Perkin Warbeck, who were assisted by the English; and though Warbeck was put to Death, it was by a Court-Martial, and not by the Civil Power: That this Case was yet stronger, the Duke, as an Alien, having Authority from his Native Kingdom, and having Orders from them to join with the English; Langdale's assisting the Duke indeed made Langdale a Traitor; but the Duke accepting his Aid could amount to no more than an Act of Hostility. That as to the Objection, that the Parliament, by their Ordinance, had determin'd his Crime to be Treason, the Intent of the Act could only be that he should be try'd if he was guilty of Treason, or not; for if the Parliament had already enacted, that he was a Traitor, a further Tryal was needless. That the Parliament, by an Ordinance in July last, had declar'd all the Scots who entred England, Enemies, and made no Difference between those who were *post nati* (born after King James's Accession) and others; and of those who were taken Prisoners, some had been ransom'd, others imprison'd, and others banish'd; and it was strange that the Duke only should be deemed guilty of Treason.*

As to the Articles: All States were bound by the Acts of their publick Ministers; that this was not a bare Surrender, but a Capitulation, deliberately concluded, wherein the Parliament lost nothing, but were considerable Gainers. That the Parliament themselves had in a manner ratified it, by setting 100,000 *l.* as the Price of the Duke's Ransom: That all Treaties were to be taken according to the plain Sense of the Words; and it would be a dangerous Precedent, if collateral Averments should be admitted of secret Meanings against express Words, in a Case of Life, and especially in Military Compacts, where the Security of Armies and Nations were concerned.

Friday, March 2, 1648. The Council for the Parliament reply'd.

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Mr. STEEL's

M. STEEL's Argument on behalf of the Commonwealth.

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Mr. Steel's Argument for the Commonwealth.

Mr. Steel said, he should admit it to be prov'd, that the Duke had that Commission and Authority he pretended; and that the Rule is generally true, that a Man is not to be punish'd for an Act he doth by the Necessity of Obedience; because he hath not *solutum Arbitrium*, which is requir'd to denominate an Action good or bad. But that this Rule had divers Restrictions: As first, where the thing commanded is unlawful, there the Command of a Superior cannot warrant the Parties executing it; and if it should, *Empson and Dudley*, with all their monopolizing Successors, were unjustly condemn'd, who had Patents and Commissions from Authority to plead. And by this Argument all those Traitors, who had hatch'd their Treasons abroad, and had the Pope, and foreign Princes to put the Stamp of Authority upon them, would in some measure be justified.

That indeed inanimate Instruments, or those were *Non Compos*, being *quasi inanimatus*, could not be guilty of Treason by the 25th of Edward III. But here the Earl was an active and vigorous Instrument; *Non modo vivit, sed in Senatum vivit*; and was a principal Member of that Parliament under which he would shelter himself; and so was a Master rather than a Servant.

Persons supplying Traitors with Provision out of Fear, not guilty of Treason.

A Man's being drunk is no Excuse if he commits a Crime.

And further, there may be a Criminal Necessity which a Man may bring upon himself which the Law does not excuse. Indeed, those who administered Provision to Sir John Oldcastle were not punish'd as Traitors, because the Record says they did it *pro timore Mortis*, & *recesserunt quam citò potuerunt*, 5 Instit. 10. But if one being drunk commits a Crime, though he have not then the free use of his Reason, he is not at all the less excusable in our Law, 1 Instit. 247. 4 l. *Beverley's Case*.

That

That the Earl's Oath and Commission, which his Council urg'd in his Excuse, were strong Arguments of a free and full Consent, for the Oath was freely taken, and the Scots could not be suppos'd to be such ill Statesmen, as to intrust the Earl with a Commission over all their Forces by Sea and Land, if they had not been satisfied his Heart as well as Hand embrac'd it; and those who had read his Letters to Sir Marm. Langdale, wherein he prays for an encrease of the Distractions in London, and for his Friends in Colchester, would not judge him an unwilling Instrument, but one who exceeded rather than fell short in the Execution of his Commission.

And Lastly, That tho' Necessity of Obedience might excuse in *privatis*, it would not in *publicis*; indeed a Feme Covert committing an Act with her Husband, which in another would be Felony, is not so in her, because in Judgment of Law she is *sub potestate viri*, 27 Aff. 40. but it was otherwise in Treason; and even the Privileges of an Ambassador, if they could be extended to the Earl's Case, would not prevent his being adjudg'd guilty of Treason, if he were found conspiring against the State where he resided: And for that inevitable Labyrinth, out of which the Earl pretended he could not extricate himself, *That whether obey or not obey, he was, at this rate, liable to be punish'd*, he might thank himself, *volenti non fit injuria*.

As to the second Part of the Earl's Plea, that he was born a Scots Man and an Alien, and so not tryable as a Traytor by the Laws of England; he answer'd, there was one Witness who depos'd positively that the Earl was born after King James's Accession to the Crown. Another had depos'd, he heard the Earl confess he was about 43 Years of Age, and consequently born since; and a third says it was commonly reported so; and if the Proof had not been so strong, the Earl having offer'd nothing against it, it was to be presum'd: And tho' it was said that Penal Laws were to be interpreted strictly in favour of Life, yet there did not want Instances where they were taken largely, where it re-lounds to the general Benefit, and is a Disadvantage

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A Woman with her Husband in the Commission of Felony Not Guilty.

An Ambassador may be try'd for Treason.

The Earl born after King James's Accession.

tage but to few; as in *Plow Com.* 36. *Plat's Case*, where the Statute 1 R. 2. c. 12. gives an Action of Escape against the Warden of the Fleet, it was resolv'd it should extend to the Sheriff of London.

A Fox-hunter
no Trespasser,
or he who erects
a Bulwark
against an
Enemy on an-
other's Land.

That the Law of *England* has such regard to the Publick Weal, that tho' in some Cases it may seem to stand too much upon Formalities, yet, for the publick Good, it will dispense with its most constant Rules, as generally where one passes over another's Land he becomes a Trespasser; yet if it be to kill a Fox or Otter, which are prejudicial to the publick, he is not so, 12 H. VIII. 10. and for the same Reason, no Man shall be punish'd as a Trespasser for erecting Bulwarks against an Enemy on another's Land, *Dyer* 36. *Maleverer's Case*.

All who were
born in Scotland
since King
James's Acces-
sion deem'd as
Natives of
England to all
Intents.

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Calvin's Case.

As to the Objection, that tho' the Earl was a *Post-natus*, yet he is *quasi Ligens acquisitus* as to *England*, and that as his Allegiance begun with an Act of that Nation, so it might determine by the same Power, viz. by a Command from the Parliament of *Scotland*. He said, if this were admitted, it would overthrow the Resolution of all the Judges and the Lord Chancellor, in *Calvin's Case*, who being born three Years after King James's Accession, was adjudg'd a Subject of *England* *Ligeantia Naturali*, which was the best and highest Allegiance, and to all Intents and Purposes the same with that of every natural born *Englisman*.

So the Natives
of *Gascoign*
were deem'd
Denizens of
England.

As to that other Objection, that it was absurd to say one might have two natural Allegiances to two several Kingdoms; he answer'd, it was so in a Physical Acceptation to be so born; yet, by Construc- tion of Law, he that is born in *Scotland* may have an Allegiance to *England* equivalent to the other, as was resolv'd in *Calvin's Case*; and in like manner it had been held for Law, that the Natives of *Gascoign*, and *Acquitain*, were Denizens and Subjects of *England* as well as those that were born here, 27 Aff. Pl. 48.

*Ligeantiam na-
turalem nemo ejus-
rare potest, nec
patriam exire.*

And no Allegiance, which gains the Name of *Alta & Naturalis Ligeantia*, can, by the Common Law of *England*, be divested (whatever it may by the Civil Law) And what is agreed to be Inherent to a natural born *Englisman*, belongs also to a *Post-natus*;

Non

Non potest patriam in quo natus est exuere, nec Ligeantiae Debitum ejurare, 1 Inst. 129.

As to that Objection, That tho' the Earl was a *Post-natus*, yet he did not differ from an *Alien*, because the Kingdoms of *England* and *Scotland* were again divided at the time of the Invasion, and there were then several Administrations of their Powers.

Obj. That the Nations were again divided at the Invasion.

To this he answer'd, That besides the Act of Union, 1 Jac. 1. there were the strongest Stipulations and Engagements by Treaties, confirm'd by Parliament and otherwise, betwixt the Nations, as were possible to be made, none of which were repeal'd at the time of this Expedition.

Answ. That the Acts of Union stood unrepeal'd.

And besides, it was agreed on the other Side, that there was always a *Ligeantia Regis*, and from thence he infer'd there was a *Ligeantia Regni*, for that Allegiance was due to the King in his politick Capacity, tho' that, indeed, was not to be separated from his natural Capacity; and therefore the Parliament were in the right (notwithstanding the King's personal Command and Opposition against them) to permit the taking of the Oath of Allegiance to him, and not to abolish it till after his Death, it being *ad legem legatio*; yet he held the Person was so necessary, that without it, it had been ridiculous to administer the Oath in the Form it was, in which Case *majus dignum trahit ad se minus*. And hence it was, that Capital Crimes committed in one King's Time, might be proceeded against after the Death of that King, 3 *Edw. III. Fitz. Rattach. 18. & Br. Cor. 178*. And tho' many Kings have oppress'd, instead of preserving their Subjects, yet what *Brasson* said of the Regal Power was true, *Non aliud Rex potest quam quod de jure potest*; and if any other Construction should be made, it must follow, that in the King's personal Absence, Minority or Disability, the Kingdom must have been but weakly, or not at all govern'd; from all which he infer'd, that the Obligation and Allegiance which was due to the King was due to the Kingdom also.

That Allegiance was due to the King in his politick Capacity, and consequently to the Kingdom. The Oath of Allegiance permitted to be taken therefore to the King till his Death.

Capital Crimes committed in one Reign may be proceeded against in another.

The Allegiance due to the King is due to the Kingdom.

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Here he took occasion to shew, that as the Earl was charg'd with Murder, there was no need of any Denization to find him guilty of that, as there was in Treason; and it could not be deny'd but

The Act of one
the Act of all.
Murder or Rape
committed by
an Alien in this
Kingdom shall
be try'd here.

Authorities ci-
ted for charging
the Duke as
Earl of Cam-
bridge.

By the 4th of
Jac. Treason
committed in
either Kingdom
to be try'd
where the Party
is apprehended.
Other Crimes in
that Kingdom
where commit-
ted.

Stats try'd for
Treason here be-
fore the Union,
on account of
the Homage
that Kingdom
ow'd to this.

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The Duke a
Traytor by the
local Allegiance
he ow'd.

many had been kill'd and murder'd by the *Scotish* Army; and what was the Act of one was the Act of all, *Dyer* 38. *Fitz. Cor.* 433, &c. That Rape was punish'd in *England* committed by a *Scot*, 13 *Eliz. Dyer* 304. and Murder done by the Lord *Zanchar* a *Scot*, 9 *Co.* 116. where he is indicted by the Name of *Richard Creighton* Esq; which, together with the exprefs Authority of 11 *Edw. III. Fitz.* 473. he thought were sufficient Warrants for charging the Prisoner by the Name of *James Earl of Cambridge*, without mentioning his Dukedom, as the Earl had so often insisted they ought.

But he said, he pass'd by the Charge of Murder, which he did not design to rely upon, being unwilling so high an Offence should go under any other Name than Treason. He said he would show that by the Statutes made for a stricter Union since King *James's* Accession, that *Scotland* was no more to be look'd upon as an Enemy's Country (which Statutes he recited) and observ'd, that by 4 *Jac. I.* the Offenders in Treason were to be try'd where apprehended, in which Kingdom soever the Treason was committed, tho' for other Crimes, indeed, they were to be sent to the Kingdom where the Offence was committed.

Then he proceeded to mention the Homage antiently done by that Kingdom to this, and shew'd that several of the *Scots* had been executed for Treason here on that Score, particularly *Simon Frysel*, 34 *Edw. I. Anno* 1306, who being a Native of *Scotland*, came from thence, in a hostile manner, to invade this Kingdom; and being taken, was condemn'd as a Traytor, *Mat. West*, 456. And, in the same Year, *William Wallis*, a *Scot*, was executed as a Traytor for the same Offence. *Walsingham*, fo. 61.

He added further, That altho' the Earl should be look'd upon as *Ante-natus* and a Foreigner, yet by vertue of his local Allegiance, both in *England* and *Scotland*, he was a Traytor; For if a Foreigner come into this Nation, and abide here, and commit an Act which would be Treason in an *English* Subject, it is, by our Law, Treason in him, because he oweth *localem Ligeantiam*, and the Indictment against such a one shall say *Contra Ligeantiam sue Debitum*,

Debitum; 7 Li. Calvin's Case; so in 36 Eliz. some Portuguese here in England join'd in an Act of Treason with Dr. Lopez, and it was adjudg'd Treason in all: So the Earl, tho' he was born before the Union; yet he liv'd in Scotland after the Union, whereby he became a Subject, at least, *locali Ligantia*; and tho' he might object that the local Allegiance he ow'd; by vertue of his former Residence in England; was determin'd by his Removal from hence; yet by his late coming in, that was renew'd, for he came from a Kingdom then; by his own Confession, in Amity with us. And this was the Case of Shirley a French Man, who came from France then in Amity with England; and being taken levying War, was executed as a Traytor, 4 Mar. Dyer 144.

Next he held, That by the Act of Naturalization of the Earl's Father, the Earl was also naturaliz'd; tho' born before; that the Act expressly extended it to his Father's Heirs, and gave them a Power to inherit or purchase (both which the Earl had done) and which he would have been entitl'd to do, had the Words been only General; tho', indeed, in Case of a Denization only, there may need the Word Heirs to extend it to them. 1 Inst. 129.

That an Act for naturalizing the Father shall extend to his Issue born before the Act, without special Words.

Not so in Case of a Denization.

As to that Objection; That tho' the Act did make the Earl's Father as a native English Man; yet the Earl being born of a Scots Woman still remain'd an Alien.

He answer'd, That altho' formerly it had been controverted; whether the Issue of an English Man; born out of the Kingdom of an Alien Woman; should be a Subject of England; yet he took the Law to be clear now; that such Issue is a Subject to England.

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By the Common-Law, *Patrius sequitur semen*, for if a Free-Man married a Nief; and had Issue; that Issue was free; 4 Edw. IV. 25. Scatbam, Villen. 9. but it was otherwise if the Man had been a Villain and the Woman Free.

Patrius sequitur semen.
As where a Free-Man marries a Nief (or Slave)
A Woman Alien indeniz'd by her Marriage with a Native (at least during Coverture) consequently her Issue

That by the Common-Law; a Woman Alien is; by Marriage with a Native, indenized; and shall be endowed, as was resolv'd by all the Judges,

The two Sons
of a Native,
born of an Alien
Woman beyond
Sea, adjudg'd
to be Denizons

A Native of
England may
travel without a
Licence.

His sitting in a
judicial Capacity
in the English
Parliament, an-
other Argument
of the Earl's
Denization.

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A Villain had
his Freedom by
being made a
Knight.
Treason for the
Earl to join
English Rebels
while the Na-
tions were in
Amity.

when *Edmund*, the Brother of *Edw. I.* married the Queen of *Navarre* and died; and tho' she should not, as in some Cases has been doubted, yet during the Coverture she was indeniz'd, which is enough to indenize the Issue; for tho' when a Nief married a Free-Man, it was doubted whether that was a perpetual Enfranchisement to the Woman after the Death of her Baron, yet it never was doubted, but that both herself, during the Coverture, and her Issue ever after, were enfranchis'd, 1 *Inst.* 136. And in 2 *Car.* It was resolv'd by all the Judges in *Stephenson's* Case, that the two Sons of *Stephenson*, born beyond Sea of the Body of an Alien, were Denizons.

As to the Case of *Arden*, which had been cited to the contrary, he did not think that made against the said Opinion, for the Plaintiff's Ancestor, it appear'd, went beyond Sea without Licence, contrary to the Statute of *Richard II.* then in force, which being now repeal'd, and the Natives being at liberty to travel without Licence, as they were before by the Common-Law, the Law is now otherwise.

That it was further to be consider'd, that the Earl himself had contributed to his own Denization; for receiving a Writ of Summons 15 *Car.* commanding him *ex Fide & Ligeantia sua* to appear in Parliament as a Peer of this Realm; he did accordingly appear, and acted in that Parliament, being chosen of several Committees, in great Concerns of the Nation, which were inconsistent with being an Alien. He did admit that every Office would not make an Alien a Denizon; but to have a judicial Power in Parliament, and to sit in the Parliament of *England* by vertue of such a Summons; all this together would, at least, amount to a Denization. He added, that a Denization was a kind of a national Manumission; and if a Villain were made a Knight, this made him free *Ratione Dignitatis.* *Britton*, fo. 79, 82. which he thought pallel to this Case.

The last thing he insisted on, to prove him a Traytor, was his coming from a Nation in Amity with this, and his marching and corresponding with

Sir

Sir Mar. Langdale, and other *English* Rebels. That it appear'd by the Earl's Confession, and the Declaration made on the Expedition, that the Nations were at Amity, which must conclude him and his Party from alledging the contrary now to serve a Turn, however the Matter really was; and here he again cited *Shirley's Case*, &c.

But, he said, it was objected, that, indeed, where Aliens fight under the Standard of the *English*, there it may be Treason in all, but not so where the *English* fight under the Standard of Aliens, which was alledg'd to be the present Case.

To this he answer'd, That it appear'd in proof, that the *Scots* came in on the Invitation of their Friends in *England*, and therefore were to be look'd upon as Auxiliaries to the *English*: But, he said, this was not material whether they were Principals or Auxiliaries, for it was the coming in a hostile Manner in time of Peace, that made them Traytors.

That Treason, in its original and genuine Acceptation, was only and properly among Allies and Friends, *Mirror* 30, 201. and a greater Trust was plac'd in *Alien Armies* than in others: That it was the Breach of Trust that made the Treason; and there could be no Treason but where there was a Trust.

As to the Objection, That the House of Commons had voted them Enemies; the Words of that Vote seem'd to be exclusive of the Prisoner, mentioning only those under his Command; but, however, every Traytor is an Enemy, and the Conclusion of the Charge doth not improperly pray Judgment against him, both as a Traytor and public Enemy; and take the Words in the strictest Sense, the Vote only calls those of the *Scottish* Nation Enemies, but those of this Kingdom Traytors; and he thought the Earl sufficiently prov'd to be of this Nation, and so a Traytor even by that Vote.

As to the third Part of the Earl's Plea, That he surrender'd upon Articles, this was admitted; and that by them he was to have Quarter and his Life assur'd, this he also admitted. But then he said,

Page 578.
Articles enter'd
into by military
Officers, could
not pardon
Treason com-
mitted against
the Civil Power,
for that the
Power of Par-
doning is incom-
municable.

The King can-
not dispence
with any Sta-
tute or other
Law by a Non-
obstante, where
the Interest of
a private Per-
son is concern'd
Rem. As to
the Interest of
the Publick.

The Intention
of the Parties
in all Compaſts
was to be con-
sider'd, nor
could the Com-
miſſioners have
bound the Civil
Power if they
had ſtipulated
to do it.

Page 579.
That the Duke
had loſt the Be-
nefit of his Sur-
render by ma-
king his Escape.

that theſe Articles could not avail him againſt the Civil Power of the State, for if they did, they muſt amount to a Pardon or a Diſcharge of Treason, which was never ſuppos'd to be delegated to the Military Power; not that the Articles were to have no effect, for he was by them freed from the immediate Execution of the Sword: But the Power of pardoning Treason was ſo inſeparable from the Supreme Power, that by our Law it was doubted whether it was communicable to any other, 5 *Edw. IV. 123. Bre. Treason, 22.*

That no Officer or Miniſter of State can give away or diſpence with the Intereſt of the Commonwealth; that the King was the Supreme Officer of the Commonwealth; and yet if an Indictment of Nulſance had been prefer'd againſt one in his Name, it had not been in the King's Power to have diſcharg'd this Offence, 3 *Edw. III. Fitz. Aff. 443.* Nor could he for the ſame Reason, by any Non-obſtante, diſpence with the Penalty of any Statute which concern'd the Intereſt of the Commonwealth, 12 *Jac. Sir Arthur Ingram's Caſe*, and 36 *Eliz. inter Hamond and Griffith.*

As for an Alien Enemy, who was triable by Martial Law, he might poſſibly be diſcharg'd by the ſame Power; but for a Traytor, triable only by the municipal Laws of the State, to be diſcharg'd by a ſubordinate Power, without the Concurrence or Confirmation of the Magiſtrate, he thought was ſtrange Doctrine.

Then he ſaid, That the Intention of the Parties, in all Contracts, was to be obſerv'd; and two of the Commiſſioners had ſworn they never intended to include the Civil Power; and if they had, and expreſſly ſtipulated that the Priſoner ſhould have been exempted from the Civil Power, ſuch an Article had been void.

And further, if the Earl had been *de facto* pardon'd, yet he ſeem'd to have loſt the Benefit of it by making his Escape, after he had made the Governor a ſpecial Promise to the contrary, whoſe Priſoner he was; for that he who ſurrenders himſelf a Priſoner of War, on Condition to have Quarter, and afterwards breaks through what on his Part

was
was

was to be perform'd, has depriv'd himself of that Privilege, which otherwise he might have enjoy'd.

As to that Objection, How is the Consideration made good to him, on which he surrender'd, viz. Quarter, if he must now be question'd for his Life? and that it had been better for him if he had died then, for thereby he had preserv'd his Estate, and avoided the Consequence of an Attainder.

He answer'd, It was strange it should be thought no Privilege to have so much Time to Die; that it was some Privilege beyond an immediate Death by the Sword (which was usually sudden, and *sine strepitu Judicii*) to have a fair judicial Proceeding; and Council assign'd him to argue his Cause, &c. nor was the Inconvenience greater, in point of Estate, by the old Law, for a Traytor who died in *furor belli*, forfeited his Estate.

That the Duke had receiv'd some Benefit by his Articles, by being allow'd a fair Tryal, and not being put to the Sword immediately.

As to the Instances of *Joshua* and the *Gibronites*, it was not parallel, for *Joshua* was a Magistrate as well as Commander; and the other Instances fetch'd from Scripture, he said, had no Resemblance with this: And now he said, tho' he might have demanded Judgment on the Prisoner's failing to make good his Plea, before he had said any thing to it; the Plea of being an Alien lying upon him that pleads it to make out, 9 *Edw. IV. 12. Dyer 300.* And that a Plea of Pardon implies a Confession of the Fact, if not made out, and proves fatal and final to the Party, *Stanf. Cor. 150*; yet the Prisoner had not been tied up to the strict Formalities of Law, but he (of Council for the Commonwealth) had shewn the Insufficiency of the Prisoner's Plea; and having offer'd what prevail'd with his own Judgment, he submitted it, on the whole, to the Judgment and Consideration of the Court.

He who pleads he is an Alien must make it out. If one pleads a defective Pardon he shall not be admitted to plead over. *Lucr.*

On Tuesday the 6th of March, his Grace was brought to the Bar again; and Mr. Bradshaw, the President, having made a Speech, wherein he repeated and approv'd of most of the Arguments us'd by the Council for the Commonwealth; he said the Court rejected the Earl's Plea in all its Branches, and found him guilty of the Charge whereof he

The Duke's Plea rejected, and he is found Guilty.

Sentence pass'd.

Page 120.

Put to the Vote
if the Duke
should be re-
prie'd.

He is executed.

Page 120.

was Indicted; and then pronounc'd Sentence on his Grace, and the rest of the Prisoners, viz. *That their Heads should be sever'd from their Bodies on Friday next, being the 9th Instant.* The Duke, in the mean time, being solicited by *Peters*, and others, to make some Discoveries, which his Grace did not think consistent with his Honour, on the 8th of March it was put to the Vote in the House of Commons whether he should be reprie'd or not? and being carried in the Negative, he was executed according to his Sentence the Ninth of March 1648-9.

The Tryal of Lieutenant-Colonel JOHN LILBURNE, by an extraordinary Commission of Oyer and Terminer, at Guild-Hall, London, the 24th, 25th and 26th of October, 1649.

THE Commissioners being set, and Proclamation for Silence made; the Lieutenant of the Tower was commanded to bring forth his Prisoner according to the Precept.

The Prisoner being brought to the Bar, the Sheriffs of London were directed to take him into their Custody.

Cryer. *John Lilburne, hold up thy Hand.*

Lieu. Col. *Lilburne*, directing himself to Mr. *Keble* (the President of the Court) desir'd he might have the Privilege of a free-born *English* Man, and such as were due to him by Birth-right and Inheritance, having fought (as well as others) for them. He said he mention'd not this by way of Merit, to gain Mercy, he scorn'd it, and ask'd none, but from the Hands of God; he crav'd but the Liberty which *St. Paul* had, of speaking for himself when he pleaded for his Life before the Heathen Roman Judges; this, he said, he was allow'd when he was arraign'd before the House of Peers, by the King's special Order, the first of May 1641, for sticking close to the Liberties of the Nation, being one of those two or three Men who first drew their Swords in *Westminster-Hall*, against Col. *Lunsford* and his Associates, when 'twas thought they design'd to cut the Throats of the chiefest Men in the House

Page 121.

of Commons. That being taken in the Action at Brentford, by the King's Forces, and arraign'd as a Traytor before the Lord-Chief-Justice Heath at Oxford, for levying War against the King, he was try'd by the good old Laws of *England*, with all the Fairness and Equity imaginable, and permitted to plead to the Errors in the Indictment, before he pleaded Not Guilty; and had Council freely assign'd him to consult and advise with, and help him in Point of Law as soon as he had pleaded, and before any Fact was prov'd; all which he said was consonant to Sir *Edward Coke's* Judgment, in his third Part of his *Institutes*, Chap. of *High-Treason*, fol. 29, 34, 137, and 230. That being no profess'd Lawyer, he could not be suppos'd to understand the Forms and Niceties of Law; and therefore it behov'd him to consider (lest he hurried himself into Dangers) before he held up his Hand.

He complain'd, that notwithstanding Courts of Justice ought to be open and free to all People, and no Man try'd in Holes and Corners, yet at his Entrance the Gates were shut and guarded.

He said he had been summon'd before a Committee of Parliament, on much the same Preterence he was brought before this Court, and there he refus'd to proceed, till by their special Order their Doors were thrown wide open; and said if he were not allow'd the same Privilege here, he should rather die than proceed further; and that they might have no Jealousy of his Escape, he had engag'd to the Lieutenant of the Tower to be his true and faithful Prisoner, to come and go back peaceably; and if he should be separated from him by Force or Accident, to return to him as soon as he had Liberty; and he believ'd the Lieutenant did not scruple it.

Ld. Keble. Mr. Lilburne, look behind you, and see whether the Door stands open.

He said he was satisfy'd as to that; but in the next place he said, by the Act made for abolishing the Star-Chamber in 1641, all Statutes made against *Magna Charta* were declar'd to be void; and consequently that of the first of *Edw. III.* which erected these extraordinary Commissions of Oyer and Terminer

Lilburne taken at Brentford, and arraign'd before the Lord-Chief-Justice Heath at Oxford.

Courts ought to be open to all.

Page 522.

He objects that extraordinary Commissions of Oyer and Terminer were illegal.

Terminer was repeal'd, as being against the Subjects indubitable Right declar'd in *Magna Charta*, viz. That no *Englisk* Man should be subjected to any other Tryal but at the ordinary Assizes, Sessions or Goal-Deliveries.

Page 531.

He added, That this was the Opinion of the House of Commons (when they were in their Purity, and acted in defence of the Liberties of the Subject) as appear'd by the Arguments of Mr. Hyde, publish'd in a Book, call'd *Speeches and Passages of Parliament*, from p. 409 to 417, who was commission'd from the then House of Commons to complain of the special Commission of Oyer and Terminer, exercis'd in the five Northern Counties, as unjust in the Foundation, and inconsistent with the Liberties granted by *Magna Charta*; tho' the frequent Insurrections of those Counties, in Henry VIII's Time (after the Suppressions of Abbeyes) was then an extraordinary Reason for erecting that Court; and therefore if they were then illegal in those aggravating Circumstances and Dangers, much more must it be so now, to try him for Words or Books only, when there's no Insurrection in the Kingdom, and the ordinary Courts of Justice open, in which he had often (since his first Commitment seven Months ago) sought a legal Tryal, but could never enjoy that Benefit, tho' he ought, by Law and Justice, either to have been try'd at the first Assizes in the County where his pretended Crime was committed, or acquitted. Then he goes on:

That 'twas illegal to keep him in Prison seven Months and not bring him to Tryal.

Page 532.

I never acted in an hostile Manner against the present Governors; I have been in many Battels under their Command, and hazarded my Life for 'em; and, since I left my Command, have liv'd at Home in Peace. I was at the Commons Door the same Day they voted me a Traytor, and was offer'd by Mr. Rigby (who now sits as Judge amongst you) very great Matters in the Names of some great ones, if I'd follow their Directions, so that I might easily have avoided the Snares of mine Enemies, but I thought myself secure in a safe Conscience. About five a Clock next Morning, 2 or 300 arm'd Forces, Horse and Foot, hal'd me

out

out of Bed from my Wife and Children, not according to the Law as is expressly provided in 1 *Edw. VI. chap. 12.* and 5 and 6 *Edw. VI. chap. 11.* But contrary to all good Laws (tho' there has been an eight Years War pretended for the Laws and Liberties of *England*) carried me thro' the Streets of *London* in a Terror (like an *Algier* Captive) to their main Guard at *Paul's*, and thence with a new and mighty Host conducted me, by force of Arms, to *White-hall*, tho' (if I had been a Traytor) I ought to have been proceeded against by the Civil Officers, according to the Privileges the Parliament themselves, in 1641, claim'd for the six Members, in their own Book of Declarations, p. 36, 37, 76, 77. I was then carried to *Derby-House* before a Company of Gentlemen, who thought themselves authoriz'd to be a Committee or Council of State (who, I'm sure, had nothing to do with me for pretended Treason) and Mr. *John Bradshaw* (who had been Council for me before the House of Lords, in 1645, against my unjust Star-Chamber Judges) urg'd it as Illegal, Arbitrary and Tyrannical, that the Lords in the Star-Chamber should order me to be whip'd, pillory'd, &c. for refusing to answer Interrogatories against myself; and yet Mr. *Bradshaw* treads in the same Steps, and very seriously ask'd me Questions against myself; and because I refus'd to answer, committed me for Treason in general; and you are sensible Generals in Law signify nothing.

Judge *Jermyn*. Mr. *Bradshaw* is now Lord President of the Council of State of *England*, and 'twould become you to stile him so.

L. Col: *Lilb.* Tho' several Thousands of my Friends, Old and Young, Masters and Apprentices, and abundance of the Female Sex too, jointly petition'd in behalf of myself and three Fellow Prisoners, that the House would not prejudice us before we were heard, but let us have a legal Tryal, or, at least, release us, and they would give any Security for our forth coming, to answer what should be laid to our Charge; yet they got nothing but Slights, Abuses and Scorns.

That he was apprehended by Soldiers and carried to *Paul's* (their main Guard.)

Whereas he ought to have been put into the Hands of the Civil Magistrate, if he had offended the State.

Committed for refusing to accuse himself, which they themselves had censur'd as illegal Practice in the Star-Chamber.

That his Estate
of the Value of
3000 l. was
taken from him
without legal
Process.

But that you may see I have a quiet Conscience, I again and again offer'd to choose two of the House of Commons, and let my Adversaries choose two more, and refer the Difference to them; but instead of that, I had my Pockets and Chamber search'd to find Accusations against me; they took my Estate of almost 3000 l. from me, without any legal Process: But I will not name by whose Power 'twas done (at this time especially) because I will avoid Provocations as much as I can; but the Man is notoriously known who said I was a Traitor, and he would secure it from me; and yet for all this a legal Allowance to keep me alive was denied me; for I had never a Penny; but was absolutely refus'd that Right which the King always allow'd to Members committed, who afforded four or five Pound a Week for each of them, notwithstanding they had great Estates; and Col. Long confess'd he spent the King 1500 l. for his Part in Provisions. Then many of my old Acquaintance have been set to reproach me, and endeavour to take away my Life, who have confess'd they were instigated by Parliament Men so to do: I appeal to your Consciences, and to all the good People present, if this Burthen be not too insupportable to a poor Man that is but Dust and Ashes.

And therefore (tho' I ought to be try'd in *Surrey*, where the pretended Crime was committed) as I'm brought before you by a Piece of Parchment, that neither I, nor the Lieutenant of the Tower could read; not as an *Englishman*, who ought to see and read the Authority; and truly, this Piece of illegible Parchment can't satisfy my Understanding of the Legality of my Convention: But as I was not able to dispute it, here I am.

Page 536.
He demands of
the Court a
Sight of their
Commission.

And therefore, being brought in this extraordinary Manner to this extraordinary Place, I desire to hear your extraordinary Commission read: For those who now exercise the Supreme Power at *Westminster* have on the 9th of *February*, and the 17th of *March* last, positively declar'd and call'd God to Witness that they'll maintain the Petition of Right; and I would consider the Consonancy of your Commission to that, and other good old Laws of *England*, and shall

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shall then return an Answer like a rational and ingenuous Man.

To this Mr. *Prideaux* Attorney-General answer'd, That the Prisoner could not complain the Court wanted Patience; the Liberty of Speech he desir'd he had fully enjoy'd, though it were not pertinent to the Matter.: That this was not a special Commission of Oyer and Terminer, but general, according to the accustom'd Form, as had been us'd these 500 Years: That it had been openly read before Mr. *Lilburne* came; and he hoped my Lord would declare it to be according to Law in the ordinary Way. That Mr. *Lilburne's* Presentment was found by the Grand Inquest, who were Men of Ability, and understood Law as well as Fact, and aver'd the Commission was free from all Exceptions; and that for his Crimes being committed in *Surrey*, he said *Lilburne* best knew what he had been guilty of there, but he was yet ignorant what he was here to be try'd for; and desir'd he might put himself upon his Tryal.

Lieutenant-Colonel *Lilburne* observ'd, that Mr. *Attorney* (as Member of the House) was one of the Creators of these Judges, and therefore not fit to prosecute him.

Ld. *Keble*. Mr. *Lilburne*, We come here to vindicate the Liberties and Laws; and I must let you know our Commission is warrantable by them. As to your Apprehension in an hostile Manner, the Law allows the Power of the County to be rais'd, and the Sheriff may take what Power he pleases.

L. Col. *Lilb*. Not unless I resist; neither was any Sheriff, Constable, or Civil Officer there.

Ld. *Keble*. They may do it before they see him, as they are inform'd of the Danger of the Man. As to the Proceeding in the Star Chamber, or those in the North, no one here justifies it: But to tell us to our Faces we are created by the Attorney-General, is not to be suffer'd; therefore behave your self like a rational Man.

L. Col. *Lilb*. With your Favour, but one Word more.

Judge *Termin*. Mr. *Lilburne*, pray hear the Court. This Court is constituted by the Supreme and Publick

The TRIAL of

The Court tells him that the Supreme Authority was now in the Commons, as they said it was also in the Times of the Romans and Saxons.

Page 538.

He refuses to hold up his Hand till the Court tell him what it means.

lick Authority of *England*; most of us are Judges of the Law; and sworn to do Justice to every Man; and that you shall have; and you have received more Favour than any Man accus'd of Treason ever had. Our Commission is founded on the Statute of *Westminster* 2; which was obtain'd by the Baron's Wars, and purchas'd by the Sword for the Liberties and Privileges of the Subject: You are to answer the Charge of opposing the Supreme Authority now settled in the House of Commons, not newly erected, but reviv'd; for 'twas so in the *Saxons* and *Romans* Time. Our Commission is general: But the Grand Inquest have found no Traitor but Mr. *John Lilburne*; and the Treasons are so dangerous that they call for Justice against you; and I require you to put your self upon your Tryal, and hear the treasonable Offences laid to your Charge.

L. Col. *Lilb.* That Gentleman says I have had more Favour than ever he heard of: Mr. *Throgmorton* had as much or more, who was impeach'd of higher Treason than I am; (and that in the Reign of Queen *Mary*, who was accounted the bloodiest Prince that had reign'd in *England* for many hundred Years); he was try'd in this Place, although his Judges and Prosecutor were bent to take his Life, right or wrong; so that 'tis no extraordinary Favour; 'tis only my Right by Law: And as I have given good Reasons against the Legality of a special Commission; and suppose yours to be so, I desire all my Friends, and all good People present, to take Notice that you refuse reading that Commission, by which you go about to take away my Life. And, Sir, you require me to hold up my Hand at the Bar: I have read those Laws which are in *English*, and can't find the Meaning of it, only that 'tis of a large Extent: As for those Laws which are in *French* or *Latin*, I can neither read nor understand; but conclude the holding up my Hand to be a very ticklish Point; and that I may throw away my Life, if I hold up my Hand before I know what it means. I desire therefore a clear Explanation of the Signification of it, and then I will give you an Answer.

Ld. *Kable.*

Ld Keble. 'Tis to signify the Party is the Man enquir'd for ; do but own your self to be Mr. John Lilburne, and the Man we charge, it shall suffice.

L. Col. Lilb. I am John Lilburne, Son of Mr. Richard Lilburne, of —

Judge Jermin. Mr. Lilburne, you desire the Rights of the Law of *England*, yet question what has been always us'd. The Law of *England* is the Law of God ; 'tis no written Law, but pure, primitive Reason, uncorrupted by humane Wills, and has been maintain'd by our Ancestors ; that's the Law of *England* ; and was it not an admirable Constitution we would not meddle with it. There are two Reasons for holding up your Hand, one of which my Lord has given you ; the other is, that a pure innocent Hand shews a clear, unspotted Heart ; therefore if you refuse to do this, you deprive your self of the Benefit of a main Custom of the Laws.

L. Col. Lilb. Well, I'll take Mr. Keble's Explanation, and lay hold o'that : My Name is John Lilburne, Son to Mr. Richard Lilburne of *Durham*, a Freeman of *London*, and late Lieut. Colonel in the Parliament's Army ; if you won't believe I am the Man, the Lieutenant of the Tower will aver it.

Judge Jermin. Ask him again : Hearken, Mr. Lilburne, and use Discretion and Temper.

L. Col. Lilb. By the Law of *England* — [being interrupted] What, do you go about to circumvent me ?

Ld Keble. Here is no Circumvention, Mr. Lilburne ; as you profess to be rational in your Words, declare it in your Deeds.

L. Col. Lilb. Sir, do not surprize me with Punctilio's ; they are hard things to lose my Life upon. I tell you I am John Lilburne, Son of, &c.

Ld Keble. If you talk of Punctilio's here, we will stop your Language.

L. Col. Lilb. Sir, give me leave to speak, or knock me on the Head where I stand. Mr. Bradshaw, as President of the High-Court of Justice, (as 'twas call'd) gave Duke Hamilton leave to speak to the Punctilio's of the Law ; and I hope you will grant me, that have been in Arms for you, as much Favour as was granted Duke Hamilton that was against you.

Ld Keble.

Ld Keble. If you will not have Patience, and hear the Court, we will pass Sentence against you without further Proceedings, or any more Proof than what our Eyes see. Read the Indictment.

Mr. Broughton. Hold up your Hand, John Lilburne, and hearken to your Charge: *Thou standest indicted, &c.* [as follows in the second Day's Proceedings] Art thou Guilty or Not Guilty?

L. Col. Lilb. Gentlemen, I desire I may only speak what stands with Reason and Justice.

Ld Keble. We shall deal with you according to Reason and Justice; now in Reason you are to plead before you can be heard.

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L. Col. Lilb. Sir, I am not to answer Questions for or against my self.

Another Judge. Is pleading Not Guilty accusing of your self?

He desires a Copy of his Indictment, and Council, but to no Effect.

L. Col. Lilb. I know not what Benefit I may lose according to Rules of Law, and humbly desire a Copy of the Indictment, and reasonable time to consult with Council; if it be but eight or nine Days.

Ld Keble. You are a better Judge of the Truth than another: If you say Not Guilty, when you have answer'd, you shall have Liberty to make your Defence.

L. Col. Lilb. Sir, the Forms, and practick Part of the Law being lock'd up in a strange Language that I cannot understand, it is hard you should take away my Life for my Ignorance.

Broughton. John Lilburne, What sayst thou, art thou Guilty? &c.

L. Col. Lilb. But to be entrap'd with Niceties and Forms, that cannot be found in *English* Books, is not fair Play; therefore I again desire Council, that I may not lose my Life upon Forms and Punctilio's.

Another Judge. Then you will not plead?

L. Col. Lilb. Mr. Bradshaw promis'd Duke Hamilton to take no Advantage of his Ignorance in Niceties and Forms of Law in his Pleading; give me the the same Engagement, and I will plead.

Ld Keble. You shall have no Advantage taken.

L. Col.

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L. Col. *Lilb.* Well, Sir, then *Not Guilty* of the Treasons in Manner and Form, as laid in that Indictment. And now, Sir, I desire Council.

Broughton. By whom wilt thou be try'd?

L. Col. *Lilb.* By the known Laws of *England*, and a legal Jury of my Equals. And now, Sir, I again desire Council.

Ld *Keble.* The Form is that you will be try'd by God and your Country; if you will be try'd by Law, that is by the Rules thereof, it includes being try'd by your Country.

L. Col. *ib.* Then I hope my Answer is clear and fair, Sir.

Judge *Jermin.* Answering according to that Form means no more than this, that God is every where; and knows all things; and by your Country is as much as to say, by your Neighbours and Equals.

L. Col. *Lilb.* Sir, under Favour God is not corporally here; but I will be try'd in the Presence of that God that knows if you are possess'd with premeditated Malice and Design to destroy me, right or wrong; and by my Country, that is, by a Jury of my Equals, according to the good old Laws of *England*.

Ld *Keble.* You have done like an *Englisman*; and I promise you a Jury of good and lawful Men.

L. Col. *Lilb.* But the Indictment's so very long, that neither I, nor any Man, can carry it in our Heads; therefore, that I may make a Defence like an *Englisman*, I desire a Copy of the Indictment, Council to advise with, and Subpœna's for my Witnesses.

Ld *Keble.* If Matter of Law does arise, upon Proof of the Fact, you shall have Council assign'd.

L. Col. *Lilb.* My Lord *Strafford* was thought a notorious Traitor, and he had Council assign'd; besides, Sir, my Estate being gone, I cannot send after them; so desire I may have Council and Solicitors too.

Ld *Keble.* You cannot be allow'd Council for Fact in Treason, but must plead it your self.

L. Col. *Lilb.* If I proceed farther I know not what Benefit I may lose, therefore if you will not

He pleads Not Guilty.

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The *TRIAL* of

assign me Council to advise with before I am en-
snar'd, order me to be knock'd on the Head with-
out further Tryal.

Judge *Fermin*. My Lord *Strafford* was try'd by
Impeachment, and his Attainder by Act of Parlia-
ment; but till Matter of Law does arise, the Court
is of Council for you.

L. Col. *Lilb*. Sir, my Life is at Stake; and (as
I told you) 'twas allow'd me at *Oxford*, and their
Commission was (I am sure in Law) as legal, and
just as yours; and my Lord Chief Justice *Heath* as
legal a Judge as any of you.

Ld *Kemble*. Your Life is, by Law, as dear as ours,
and our Souls are at Stake if we do you any wrong.

L. Col. *Lilb*. I wish you take Notice of that:
But I desire the same Privilege from you (the Na-
tion's pretended Friends) I had at *Oxford* from its
declared pretended Enemies; for I hope you that
pretend to be Preservators of our Liberties will not
be more unrighteous than the declared Destroyers
of them.

Judge *Fermin*. We cannot grant Council to plead
to the Matter of Fact contain'd in your Books.

L. Col. *Lilb*. My suppos'd Books, Sir: Pray
do not skrew me into Hazards and Snares.

Ld *Kemble*. If they are not prov'd to be yours,
you are in no Danger.

L. Col. *Lilb*. If you, for whom I fought, won't
be as just as the Cavaliers against whom I fought,
I am resolv'd here to stand and die upon the true
Principles of an *Englishman*.

Judge *Nichols*. You had better follow the Pro-
ceedings of Law; for know this is not *Oxford*.

L. Col. *Lilb*. I cannot follow better Rules than
I there met with; and Sir *Tho. Gardiner* (who was
one of my Judges) if you will enable me to sum-
mon him, shall testify what I say to be Truth.

Judge *Nichols*. We are not to walk by *Oxford*
Precedents, but act by Rules of Law.

L. Col. *Lilb*. I think any legal Precedents ought
to be imitated; and besides, I think it unjust to
be try'd by Judges, who have been beating their
Brains above six Months with my Adversaries, who
(being Parliament Men) are their Creators; and if
I had

I had thought you would have tied me up contrary to your Promise, I would have died in this very Court before I would have pleaded a Word to you; so murder me; take my Blood if you please.

Ld *Keble*. This only shews the Rancour of your Heart; take heed your Heats do not aggravate your Crimes to your own Ruin.

Judge *Thorpe*. Mr. *Lilburne*, you seem'd to condemn Mr. *Attorney's* speaking with me; but (as Prosecutor for the State) he must confer with us, and we with him.

L. Col. *Lilb*. Ay, Sir, openly, but not in hugger-mugger; and this is Law, or Sir *Edw. Coke*, in his 3 *Instit. ch. High-Treason*, or *Petit-Treason*, hath publish'd Falshoods, and the Parliament licens'd them.

Ld *Keble*. 'Twas not in hugger-mugger: Hear the Court, and carry your self within the Bounds of Reason and Law; for we must order the Jury to be return'd.

L. Col. *Lilb*. Sir, one Word, under Favour; is it just to allow Council to plead for an Estate, and deny it to enable me to plead for my Life? Or is it so, for some of you Judges, to be seven Years ending a Suit for Money or Land, and refuse me a few Days to think what to say in Defence of my Life? Sir, these were pretended to be arbitrary and tyrannical Prerogatives of the King's Will; but if they are not taken away by those who took away his Life, then only the Name is gone, but the Tyranny left. There is no Pretence to deny me Council; Judge *Heath* is my Authority, who (I being try'd for the highest of Treasons, actual levying War against the King, where we fought almost to Handy-gripes, to the Sword-point, and But-end of our Muskets, and I taken in the Fact) yet granted it.

Judge *Thorpe*. He knew 'twas no Treason; 'twas done by the Parliament's special Authority; you had their Commission to justify you.

L. Col. *Lilb*. The Letter of the Law was point-blank against me; and if the Cavaliers had prevail'd, they might have hang'd me and you too for all our Parliament-Commissions.

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The Name of
Tyranny he
says was only
remov'd by the
King's Death,
the thing was
still practis'd
even by those
who pretended
to put him to
Death for it.

The TRYAL of

Judge *Jermin*. They gave you more Favour than was your Right by Law ; because the like that was done to you might be done to those Prisoners who were in the Parliament's Power.

Ld *Keble*. Why did not they prosecute and proceed to Conviction and Execution ?

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L. Col. *Lilb*. Sir, under Favour ; after I had pleaded to the Indictment, the Judge said, because you shall see Law and Justice is on the King's side against the Parliament, the Court gives you a Week's time to consult with Council what to plead for your Life ; and order'd off my Irons, and allow'd me Pen, Ink and Paper. In this time, Sir, I writ to my Wife, and enclosed one Letter to the Speaker, and another to young Sir *Hen. Vane*, and sent it by Captain *Primrose's* Wife ; and on my Wife's importunate Solicitations, the Declaration of *Lex Talionis* was procur'd, and my Wife brought the Substance of it in a threatening Letter from the Speaker, and deliver'd it to Judge *Heath's* own Hands, which stop'd any further Tryal, or I had been condemn'd and executed.

Ld *Keble*. 'Twas well for you, you had such fair Play ; and you shall here have as fair Dealings as our Judgments and Consciences can lead us to, without granting more than the Law will allow.

L. Col. *Lilb*. Sir, by Law any By-stander may speak for a Prisoner when he perceives things urg'd contrary to Law : I desire this Gentleman, my Solicitor, may speak two or three Words.

Mr. *Sprat*. 'Tis easy to prove the whole Indictment to be Matter of Law.

Judge *Jermin*. What impudent Fellow is that, that dare speak without being call'd ?

Ld *Keble*. Mr. *Lilburne*, I promise you when there comes Matter of Law, your Lawyer shall speak, but he cannot be allow'd before.

L. Col. *Lilb*. Sir, if the Fact be prov'd, it is a Question, whether the Words be Treason in Law, and whether they be rightly alledg'd in the Indictment, as to Matter, Time and Place.

Ld *Keble*. We know not whether the Law you suppose will arise 'till the Words be prov'd.

L. Col.

L. Col. *Lilb.* You promis'd not to take Advantage of my Ignorance, and now hold me to a single, naked Plea, which is worse than the worst of the Prerogatives in the King's Life-time, though you declar'd against them. Lord, deliver me from such Justiciaries.

Ld *Kettle.* You were bid to forbear Reproaches, and act rationally, not break into Extravagances, and Bitterness of Spirit.

L. Col. *Lilb.* I look upon my self as a dead Man, for want of Council to help my Ignorance; and if you will not allow it, I will go no further, if I die for it.

Judge *Jermin.* You have transgress'd the Laws of *England* by not holding up your Hand, which I never before knew an *Englishman* refuse. We are on our Oaths, and will discharge our Consciences; and we have told you what the Law is, yet you will not be satisfied.

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L. Col. *Lilb.* Sir, my Prosecutors have had a long time to consult with Council, yea, and with your selves, to contrive Tricks and Snares to destroy me; and I have had no time for Defence against such potent Malice: You your self said the Law of God is the Law of *England*; act by that; do as you would be done to.

Another *Judge.* The Laws of God, of Reason, and of the Land, are join'd in the Laws you shall be try'd by.

Judge *Thorpe.* For my particular Part, I never saw your Indictment before this time, nor ever was at any Consultation about it.

L. Col. *Lilb.* You might have seen the Substance many Months ago, and most of the Judges in *England* have had Meetings with Mr. *Solicitor* at *Serjeant's-Inn* about it.

Judge *Jermin.* 'Twas requisite (from the Importance of the Offence) such Meetings should be, that it might be grounded as the Law directs.

L. Col. *Lilb.* If you are resolv'd to destroy me by the same Prerogative *Nebuchadnezzar* did *Daniel*, I am as willing to die as he was to be thrown into the Lion's Den; it is in vain to make more Words,

The TRYAL of

Ld Keble. Take care the Sparks of your Venom do not burst out to declare you Guilty without further Proof.

L. Col. Lilb. I know the worst, I can but die ; and I have liv'd not to fear it.

Mr. Att. Gen. What is consonant to the Laws of *England* neither is, nor will be denied Mr. *Lilburne* ; but what he now desires, viz. Council, a Copy of the Indictment, and longer time, is what no one that understands the Law ever ask'd ; and if granted to him, ought not to be denied to any Man for Felony or Treason, so there would be no End of Criminal Tryals ; and of what dangerous Consequence such a Precedent may be, I leave your Lordship and the Court to judge.

My Lords, I desire Mr. *Lilburne* may be us'd with all just and legal Proceedings, and I desire the same for the Commonwealth ; and, as Mr. *Lilburne* has pleaded, that you immediately proceed to Tryal.

L. Col. Lilb. If the Law of *England* be founded upon the Laws of God and Reason, 'tis not to lay Snares to take away your Neighbour's Life, as trying me upon Forms without help of Council must be : Besides, Sir, for some of you to reproach me with the Name of notorious Traitor, when I am as innocent in the Eye of the Law (till I am legally convicted) as any of those that call me so : Do not blemish me in the Ears of the Auditors.

Mr. Att. Gen. If Mr. *Lilburne* be innocent, pray put it to a final Issue, and let the World judge.

Ld Keble. The Law of *England* is the most tender of any in the World : You have been found Guilty by twenty one Men, upon their Oaths and Consciences, yet this is not thought sufficient, but you are to have twelve understanding Men of your Neighbourhood to hear all over again before they pass upon your Life, and according to the Rules of this Law we proceed.

Judge *Termin*. And tho' you say the Laws are in another Tongue, you have no Reason to complain ; for we try you by *English* Laws, and proceed in *English* against you.

Lieut. Col. Lilb. Truly, I think 'tis not just to smooth me into Snares by fair Promises ; and when

He says the
Court ought not
to call him
Traitor till he is
convicted.

you have drill'd me into Destruction, break them :
If I had thought you would have denied me Council, I would have died before I would have pleaded.

Ld Keble. You have had time to prepare ; you know of your coming, and knew the Fact you have committed.

L. Col. Lilb. I was inform'd corresponding with the Prince was my chiefest Crime, and prepar'd my Defence to that, not dreaming of an Accusation for Books only, and then to hang me by a Law made after the suppos'd Crime was committed, is not fair.

Ld Keble. We will give you time to send for your Witneses, and consider of your Defence till to-Morrow Morning seven of the Clock.

L. Col. Lilb. Some of them are 80 or 100 Miles off ; how is it possible they should be here to-Morrow Morning ? and some (being Parliament-Men, and Officers of the Army) won't come without Compulsion, I therefore desire Subpœna's.

Ld Keble. As you knew of your coming long ago, you ought to have brought them with you.

L. Col. Lilb. How could I provide for any thing but that I was first imprison'd for ? Could I divine ? Pray give me but eight Days.

Ld Keble. We will give you no more ; the Court neither can or will wait on you.

L. Col. Lilb. My Judgment and Conscience tell me 'tis my Right by the Law of *England*, the Law of God, and the Law of Reason.

Ld Keble. You insinuate to the People as if no one had Judgment and Conscience but your self ; but I tell you, our Consciences, Religion, Zeal and Righteousness are as much as yours.

L. Col. Lilb. I shall not make Comparisons ; I speak as to my self.

Ld Keble. Mr. *Attorney* hath made Process against you, returnable to-Morrow Morning seven a Clock, therefore more Talk will be loss of time to you. And [speaking aloud to the People] all here are to observe you have had more Favour than ever Prisoner had ; you ought to have been try'd presently : But that the World may know with what Candour the Court proceeds, you have till to-Morrow Morn-

He has time till the next Day to prepare for his Defence.

ing, which is an extraordinary Favour, and the Doors are wide open that all the World may know it.

L. Col. *Lilb.* I thank you for the Favours already receiv'd. [Then he was remanded to the Tower, and the Court adjourn'd.]

October 26. The Court being set, and the Prisoner brought to the Bar. [Mr. *Lilburne's* Brother being in the Bar by him, was order'd out; and only one (Mr. *Sprat*) allow'd to hold his Books and Papers.]

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L. Col. *Lilb.* Besides, what I Yesterday alledg'd for Council, I shall mention an unquestionable Precedent: When Major *Rolfe* was indicted for High-Treason, in conspiring to poison and pistol the late King, the Lord Chief-Baron *Wilde* assign'd Mr. *Nichols*, now a Judge amongst you, and Mr. *Maynard*, as his Council, before ever the Grand Jury received Testimony to find the Bill. Now, Sir, I am an *Englisman*, as well as Mr. *Rolfe*; have been an Officer in the Parliament-Army as well as he, and fought for them as heartily as ever he did for his Life: I desire therefore, as there are many Errors in the Indictment, I may be assign'd Council, according to this Precedent of one of your own Fellow-Judges, and my Birth-right.

Ld *Keble.* What was then done nothing concerns us; perhaps he confess'd the Indictment; if you will do so too, it alters the Case.

L. Col. *Lilb.* No, Sir, he was sav'd by the Skill and Honesty of Council *Maynard*, who (there being two Facts, and but one Witness to the Proof of each) quash'd the Indictment, as contrary to the Statute of *Edward VI.*

Ld *Keble.* If Law arise that you perceive not, the Court will help you as well as your Council.

L. Col. *Lilb.* Sweet Sir, if you deny me (being upon my Life) what the Law allows, the Lord deliver me from wanting such Counsellors.

Mr. *Prideaux.* My Lord, I desire the Court would proceed, as he has pleaded and confess'd something.

L. Col. *Lilb.* Sir, you abuse me, I have done neither; my Plea was conditional; and you have broke your Promise; so my innocent Blood be upon

you.

The

The Jury call'd.

L. Col. *Lilb.* Sir, Some of the Grand-Jury did not find me guilty of Treason, and think themselves wrong'd in what was said yesterday by some of the Judges. Pray let them speak.

Ld *Keble.* Be silent and hear the Court, you can't be heard.

L. Col. *Lilb.* Then, Sir, before all this People, I make my Protest against your unjust and bloody Proceedings.

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Ld *Keble.* When your legal Time comes, you may talk till Midnight.

L. Col. *Lilb.* 'Twill be too late then.

[Here Mr. *Sprat*, or Colonel *Robert Lilburne*, whisper'd him to challenge one of the Jury, and the Judge excepted against it.]

None may assist the Prisoner in his Challenge.

L. Col. *Lilb.* Sir, any By-stander may help the Prisoner by the Law of *England*.

Ld *Keble.* It can't be granted.

[After the Prisoner had challeng'd two or three, the Jury were sworn and charg'd with the Prisoner.]

Mr. *Broughton.* John *Lilburne* hold up thy Hand.

L. Col. *Lilb.* As I did yesterday. I am *John Lilburne Freeman, &c.*

Ld *Keble.* Read the Indictment.

THE Indictment set forth, " That the said
" *John Lilburne*, late of *London* Gent. as a false
" Traytor, not having the Fear of God before his
" Eyes, &c. intending to disturb the Government
" then happily establish'd, without King or House
" of Lords, in the Way of a Commonwealth and
" Free-State; and intending to disgrace the Com-
" mons of *England*, the Supreme Authority of the
" Nation, and to bring them into Hatred and Con-
" tempt with the good People of *England*, did on
" the first Day of *October* 1649, in the Parish of
" *Mary the Arches*, in the Ward of *Cheap*, *London*,
" Maliciously, Avisedly, and Traiterously, by
" Writing, and Printing, and Publishing a certain
" traitorous Book, intitled a *Salva Libertate*; and by
" another traitorous Book, intitled *An Impeachment*
" of High-Treason against *Oliver Cromwell* and his
" Son-in-Law *Henry Ireton Esqs;* late Members of the

The Indictment for High-Treason, in printing and publishing several Treasonable Books against the Commonwealth, and stirring up the Soldiers to Mutiny.

Page 602.

" late

Page 603.

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Page 605.

" late forcibly dissolv'd House of Commons, presented to
 " publick View by Lieut. Col. John Lilburne, close
 " Prisoner in the Tower of London, for his real true
 " and zealous Affections to the Liberties of this Nation.
 " And a third Book, intitl'd *A Hue and Cry* after
 " Sir Arthur Haslerig. And by another traiterous
 " Book, intitl'd *An Out-cry of the young Men and Ap-*
 " prentices of London, or an *Inquisition* after the lost
 " Fundamental Laws and Liberties of England, direc-
 " ted by way of Letter to the Soldiers in the Army;
 " especially to all those that sign'd The Solemn Engage-
 " ment at New-Market Heath, the fifth of June,
 " 1647, but more especially to the private Soldiers of the
 " General's Regiment of Horse, that help'd to plunder and
 " destroy the honest and true hearted English Men,
 " traiterously defeated at Burford the 15th of May
 " 1649. And also by another traiterous Book, in-
 " titl'd *The Legal Fundamental Liberties of the People*
 " of England, reviv'd, asserted and vindicated: Did
 " declare and publish that the Government afore-
 " said was tyrannical, usurp'd, and unlawful; and
 " that the Commons assembl'd in Parliament were
 " not the Supreme Authority of this Nation. [Here
 " the Words laid to be treasonable in the said Libels are
 " recited, but such of them as were insisted on at the
 " Tryal, appearing hereafter in the Evidence, it is not
 " necessary to insert them here.] And the Indictment
 " further charges, that the said John Lilburne (not
 " being an Officer, Soldier, or Member of the
 " Army) Did also, at the Time and Place afore-
 " said, traiterously endeavour to incite a Mutiny
 " and Rebellion in the Army under General Fair-
 " fax; and particularly did endeavour to draw
 " Thomas Lewis, John Skinner, and John Toppe, from
 " their Obedience to their superior Officers; and
 " did deliver unto the three aforesaid Soldiers the
 " said Book, intitl'd *An Out-cry of the young Men and*
 " *Apprentices of London* [containing such and such
 " treasonable Expressions, which see afterwards in
 " the Evidence] which said Books did also contain
 " divers other traiterous, malicious, and tumult-
 " uous Expressions (not mention'd in the Indict-
 " ment) and were written and publish'd to the In-
 " tent to stir up and raise Forces against the Govern-
 " ment

"ment aforesaid, in the way of a Commonwealth
 "and Free-Estate establish'd, and for the Suppres-
 "sion and Alteration of the said Government, and to
 "stir up Mutiny in the Army aforesaid, &c. in ma-
 "nifest Contempt of the Laws of the said Com-
 "monwealth, and against the Form of the Statutes,
 " &c.

The Jury being charg'd with the Prisoner, he
 alledg'd that he pleaded Not Guilty, upon Condi-
 tion he might have as much Privilege as Duke
Hamilton and others had; and said the Indictment
 appear'd defective, both as to Matter and Form;
 and therefore he again insisted on having Time
 and Council to speak to the Errors in the Indict-
 men; but the Court rejected his Demands.

Then Mr. ———, of Council for the Common-
 wealth, open'd the Indictment; and Mr. *Prideaux*,
 Attorney-General for the Commonwealth, having
 further enlarg'd upon and aggravated the Charge,
 proceeded to call his Witnesses; and first, to prove
 the Book, intitled the *Out-cry*, to be the Pri-
 soner's.

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Mr. *Thomas Newcomb* the Printer was call'd, and
 the Book being shewn him, he depos'd, That about
 seven or eight Weeks since Lieut. Col. *Lilburne* and
 Captain *Jones* brought that Book to him; and Cap-
 tain *Jones* agreed with the Deponent for the prin-
 ting it; and he receiv'd the Copy from Captain
Jones; and that afterwards Mr. *Lilburne* examin'd
 and look'd over one Proof-sheet, and the Deponent's
 Corrector another; and Captain *Jones* read the Ma-
 nuscript to the Corrector: That the Deponent
 printed only some few Impressions of the last Sheet
 of the Book; which, with the Forms, were taken
 before he had perfected the Sheet; and that he
 knew not where the former Part of the Book was
 done.

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 Evidence of his
 being concern'd
 in publishing
 The Out-cry,
 &c.

Mr. *Att. Gen.* Mr. *Jones* read the Original, and
 Mr. *Lilburne* corrected the Copy?

L. Col. *Lilb.* Sir, you abuse me, by endeavou-
 ring to make him say more than his Conscience
 dictates; he says I cast my Eye upon the Copy;
 I de-

I desire to know if I was at his House to give any Directions after the Copy was taken.

Mr. Att. Gen. That's no Thanks to either of you.

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John Tooke, John Skinner, Thomas Lewis, John Hawkins and John Merriman sworn.

Evidence of his distributing *The Out-cry* to the Soldiers.

Tooke depos'd, That about seven Weeks before, *Thomas Lewis*, *John Smith* and the Deponent, met *Lieut. Col. Lilburne* in *Ivy-lane*; and that *Thomas Lewis* taking Acquaintance with *Mr. Lilburne*, *Mr. Lilburne* ask'd them to drink, which they did; and that *Mr. Lilburne* ask'd them if they had seen a Book call'd *The Apprentices Out-cry*; and *Thomas Lewis* answering no, but had Thoughts to buy one; *Mr. Lilburne* said he had one in his Pocket and would give it him, which he did, and nam'd a Place (which the Deponent had forgot) where more were to be sold.

L. Col. Lilb. You charge me, in the Indictment, with going amongst the Soldiers to seduce them; now I always endeavour'd to avoid meeting them, or discoursing with 'em; and desire to know if they did not speak to me first.

Ld Keble. It's no Matter who spoke first, if you gave 'em the Book.

Lewis. On the sixth of September last I met *Lieut. Col. Lilburne*, and ask'd him how he did; and having told him I knew him formerly, and had visited him in the Tower, he ask'd me to drink, on which we went to the *Red-Cross* in *Newgate-Market*; and there he ask'd me if I had heard of a Book call'd *The Out cry of the Apprentices*; and I acknowledging a Desire to have one, *Mr. Lilburne* said he had one given him, and he would give it me; and on my asking him where I might buy more, he desir'd me to go to a Friend of his in *Martin's lane* (the Man's Name I have forgot) and tell him *Mr. Lilburne* was there; and, says he, *perhaps where you find that Man you may have more Books.* And the same Book I had from *Mr. Lilburne* I deliver'd to the Lieutenant.

And inciting them to Mutiny.

Mr. Att. Gen. What did *Mr. Lilburne* say to you concerning your Pay?

L. Col,

L. Col. *Lilb.* Sir, don't direct him, leave him to his own Conscience and Memory.

Lewis. He said, *You Soldiers keep us all in Slavery*, and ask'd how was our Pay, saying there was Money come for us, and ready to be deliver'd us.

Skinner depos'd, That the Beginning of September, the Depoent and Mr. *Lewis* met Mr. *Lilburne* in *Ivy-lane*; and that they went to the *Red-Cross* in *Newgate-Market* to drink (but knew not whether 'twas Mr. *Lilburne* or Mr. *Lewis* that propos'd going) that Mr. *Lilburne* ask'd Mr. *Lewis* if he had seen the Book call'd *The Apprentices Out-cry*; and told *Lewis* he had one which was given him, and said he would give it to *Lewis*, and did so, 'twas afterwards deliver'd to the Lieutenant.

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Lieut. I deliver'd it to my Captain.

Capt. Merryman. This individual Book I deliver'd Mr. Secretary *Frost*, who made me sign it that I might not be mistaken.

L. Col. *Lilb.* My Lord, I desire the Witnesses may answer if that be the very Book in the Indictment; and if they have examin'd it with the Indictment.

Here Mr. *Attorney* repeated the Evidence to the Jury; and again observ'd that Mr. *Lilburne* was Corrector, and read the Original Copy.

L. Col. *Lilb.* They have not answer'd my Question; I desire the Jury will take notice of the Question, and that I am deny'd an answer.

Mr. *Att. Gen.* The next Thing charg'd upon him, is a Paper intitled *Salva Libertate*; I sent to him to come to me about it, but he refus'd coming with the Lieutenant of the Tower, unless I directed my Warrant to bring him.

His publishing
the *Salva Libertate*
prov'd.

Lieut. of the Tower. I sent Mr. *Lilburne* Word I had Orders to carry him to Mr. *Attorney's* Chamber; he came to me and desir'd a Sight of the Warrant; and having told him I had none, he answer'd, *I shan't obey a verbal Warrant, nor won't go unless you force me.* When I had a Warrant, he desir'd to read it, and to take a Copy of it, which he did: About three Hours after he came again to me, and said, *Pray receive this, viz. (The Salva Libertate) for I intend not to own that Gentleman's Power who sent the Warrant;*

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The *TRIAL* of

Warrant; and said he gave it me to shew to Mr. *Attorney*; and this is the same he deliver'd to me, and afterwards went very quietly with me to Mr. *Attorney's* Chamber; which is all I can say.

Ld *Keble*. Mr. *Lilburne*, Is it your Hand-writing? Shew it him.

L. Col. *Lilb*. I am too old to be snapt in such simple Gins, or catch'd with Fooleries; I'll look on none of your Papers; prove it.

Ld *Keble*. Your Writing or not Writing is nothing, you deliver'd the Book.

L. Col. *Lilb*. Sir, I desire to know in what Part of the *Tower* you receiv'd this Paper, whether the Place was in the Liberties of *London* or County of *Middlesex*?

Lieut. of the *Tower*. 'Twas at the Steps by the narrow Passage at my Garden-end, 'tis commonly reputed to be in *Middlesex*, but I know not certainly.

Mr. *Att. Gen*. I must desire the Jury to observe, that tho' Mr. *Lilburne* does not acknowledge his Hand, he implicitly confesseth it.

L. Col. *Lilb*. Sir, I deny nothing, and what you can prove I have a Life to justify, but prove it first.

Mr. *Att. Gen*. The next Thing he is charg'd with, is intitled *An Impeachment of High-Treason against Oliver Cromwell, &c.* I suppose he'll not own it, but may be ask'd the Question.

L. Col. *Lilb*. I shall answer none of your Questions, make your Advantage of it.

Thomas Daffern, *Richard Lander* Marshal, Major *Hawksworth* Governor of *Warwick-Castle*, all sworn.

Daffern depos'd, That the 12th of *August* last, the Prisoner gave him a Book at *Winchester-House* in *Southwark*, to carry to Colonel *Ayres*, who was then remov'd to *Warwick-Castle*; and that he deliver'd it accordingly.

Lander depos'd, That he was present, took it from him, and deliver'd it to the Governor.

Hawksworth depos'd, That he seal'd it up with three or four Seals and sent it to Colonel *Puresfoy*.

Colonel *Puresfoy* sworn.

L. Col. *Lilb*. I except against his Evidence, I am indicted for Crimes against the Keepers of the Liberties

The Book intitled *The Impeachment, &c.* prov'd to be publish'd by him.

berties of *England* (as they call themselves) and he is one of 'em, therefore a Party, and no Witness in Law.

Pursey. I declare this to be the very individual Book I receiv'd seal'd up from Major *Hawke*sworth, and my Hand is at it.

Page 611.

Mr. *Attorney* observ'd that this was prov'd to be the very same Book which Mr. *Lilburne* deliver'd Mr. *Daffern*; and that the next thing he was charg'd with, was intitled *A Preparative to the Hue and Cry*, &c. Mr. *Lieutenant* of the Tower, I desire you'll speak your Knowledge.

The Preparative to the Hue and Cry after Sir A. Hallerig, prov'd to be publish'd by him.

Lieut. of the Tower. My Lord, Mr. *Lilburne* gave me such a Book, and I have such another at Home, but I can't swear either to be the same he gave me.

Mr. *Nutleigh* and *Edward Radney* sworn.

- L. Col. *Lilb.* Pray what are these Gentlemen? I never saw either of 'em before.

Mr. *Att. Gen.* They are my Servants, Mr. *Lilburne*.

Nutleigh. The 14th of *September* last I saw the Prisoner deliver this specifical Book to Mr. *Attorney*, and call'd himself the Author of it, the Erratas of the Printer only excepted.

L. Col. *Lilb.* Let him be ask'd if the Words (which are many) did not follow.

Radney depos'd, he saw him deliver the Book and own'd it; but neither of them remember'd the Words, which are many, to have been added.

Lieut. of the Tower. My Lord, I was present, and the Words were, *Here is a Book which is mine, which I will own, the Erratas or Errors of the Printer excepted, which are many.*

Mr. *Att. Gen.* aver'd that this was the individual Book that Mr. *Lilburne* gave him; and that there was another in the Indictment, intitled *The legal Fundamental Liberty*, &c. which had Mr. *Lilburne's* Name to it, and tho' he would not own it he should prove it from his other Books, viz. *The Preparative to the Hue and Cry*, and *The Salva Libertate*; that *The Preparative* he own'd before three Witnesses; and that Mr. *Lieutenant* of the Tower receiv'd *The Salva* from his own Hands. Read the Marginal Note, Page 2.

Page 612.

Clerk

The TRYAL of

Clerk reads. *See my Second Edition of my Book of the 8th of June 1649, intitl'd The Legal Fundamental Liberties of the People of England reviv'd and asserted, p. 48, 49, to 63.*

Mr. Att. Gen. This Book hath Mr. Lilburne's Name, and he owns it in his *Hue and Cry*, in the Margin in the third Page.

Clerk. *Peruse the Quotations in the sixth and eighth Pages of my foremention'd Impeachment of High-Treason against Oliver Cromwell, as also the 12th and 15th Pages of the second Edition of my aforemention'd Book, dated the 8th of June 1649, intitl'd, &c.*

Mr. Att. Gen. Read the Fourth in the Body of the Book.

Clerk. *See also the second Edition of my Book of the eighth of June 1649, intitl'd The Legal Fundamental, &c.*

Mr. Att. Gen. Read the 24th Page of the *Salva* in his own written Hand.

Clerk. *See also the Edition, &c. the same as before.*

Mr. Att. Gen. Read where 'tis mark'd.

Clerk. *I have publish'd my Plea against the present Power, in my second Edition, ut supra.*

Mr. Att. Gen. My Lords, he here, in several Places, owns the Book, viz. *The Legal*, &c. to be his; I shall now proceed to shew his Words in these Books to make good the Charge against him, and begin with the Act itself, which makes the Fact Treason.

Clerk. *Die Lune, 14 May 1649 — —*

L. Col. Lilb. Hold, Sir, first prove that it is an Act of Parliament.

Mr. Att. Gen. My Lords; when an Act is publish'd, the Court is bound to take notice of it; but we'll prove it.

L. Col. Lilb. Mr. Prideaux, there may be counterfeited Statutes as well as Money, therefore prove it.

Nutleigh depos'd, That 'twas a true Copy which he had examin'd with the Record at *Westminster*.

L. Col. Lilb. Is he able to depose that 'tis a true Law in all Parts of it; and that it has been proclaim'd

He insists on having an Act of Parliament prov'd, which was done.

Page 613.

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claim'd in every Hundred and Market-Town, according to the old Law not yet repeal'd?

Ld Kable, Read, Clerk.

Clerk reads. "The Act the 14th of May 1649, An Ordinance making it Treason to conspire against the Commonwealth, &c. or affirm in Print, &c. that the Government is unlawful or usurp'd.
 "declaring, That whereas the Parliament had abolished Kingly Government, and resolv'd that the People should be govern'd by their own Representatives, 'twas enacted that whoever should maliciously publish by writing, &c. that the said Government is tyrannical, usurp'd or unlawful, and not the Supreme Authority; or shall plot or endeavour to stir up or raise Force against the present Government, for Subversion thereof, or against the Keepers of the Liberties of England, or the Council of State, or either of them, shall be deem'd guilty of High-Treason: And that whoever, not being an Officer or Soldier, should endeavour to stir up any Mutiny in the Army, or withdraw the Soldiers, &c. from their Obedience, or should invite or aid Foreigners to invade England or Ireland, or adhere to them, or counterfeit the Great-Seal, shall be likewise deem'd guilty of High-Treason, and forfeit, &c. provided the Offender be prosecuted within a Year after the Offence committed.
 Or to incite the Soldiers to Mutiny, &c.

Mr. Prideaux. Read the other Statute.

Clerk reads the Act of the 17th of July 1649, which confirms the abovesaid Act, and adds some other Treasons in relation to the Coin. Page 614.

Mr. Att. Gen. My Lords, now we shall make it out from his own Books, that he has declar'd the Government to be tyrannical, usurp'd, and unlawful. Read his Impeachment, &c. Fol. 8. Page 615.

L. Col. Lib. The Act which I have, does not agree with that which was read, which I design to make use of by and by.

Clerk reads. The People now see their Slavery and absolute Bondage is like to encrease, under the present tyrannical, arbitrary, new-erected, robbing Government.

Mr. Att. Gen. See the Title Page of the last Book.

Clerk reads. Before a legal Magistracy, when there shall be one, which now there is none.

VOL. I. Part II.

F

Mr.

The TRYAL of

Mr. Att. Gen. See Folio the First.

Clerk reads. *The present Juntes are no Parliament, according to Law or Reason, but are a Company of usurping Tyrants and Destroyers of your Laws, Liberties, &c.*

Mr. Att. Gen. Read the Title Page of the same Book.

Clerk. *An Impeachment of High-Treason against Oliver Cromwell and his Son-in-Law, &c.*

Mr. Att. Gen. Mr. Lilburne is more than a Leveler, he endeavours to pull up the Laws of England by the Roots, for he says there is no Magistracy, and if so, I shall conclude there is no Propriety.

L. Col. Lilb. Mr. Prideaux, it's not long since you suffer'd the same Asperſion, and were pen'd down in a black Bill to my Knowledge; pray who were the greatest Rooters, those who endeavour'd to prevent the Mischief, or those who gave the Cause? And your Inference is very strange, since Propriety is antecedent to Magistracy, and first in being; I wish your Practices were as consonant thereto as my Principles.

Mr. Att. Gen. Read the second Page at the Mark.

Clerk reads. *I shall binder (as much as I am able) all Addresses to the usurping Tyrants as a Parliament, &c.*

Mr. Att. Gen. Read also Page 28.

He says most of the present Council of State must go to Tyburne, which happen'd true, as to many of them.

Clerk. *Most of our present Juntes, and their new-fram'd Council of State, must go to Tyburne or Tower-Hill, &c.*

Mr. Att. Gen. Read the 11th Page of his Book call'd *The Apprentices Out-cry*.

Clerk. *We are oblig'd to take no more notice of the Men sitting at Westminster, than as so many Tyrants and Usurpers, &c.*

Page 616.

Mr. Att. Gen. Read Page 2.

Clerk. *Your Officers have often stil'd 'em no better than a Mock Parliament, a Shadow of a Parliament, &c.*

Mr. Att. Gen. Read Page 3 at the Mark.

In another Place he says, that Misery and Poverty never were so extreme under the worst of our Kings.

Clerk. *Misery, Poverty, &c. never were so extreme under the most tyrannical of our Kings, as under these pretended Friends, &c.*

Mr. Att. Gen. Read Page 4.

Clerk.

JOHN LILBURNE, *An.* 1649.

555.

Clerk. *And nothing but the groundless Wills of these Men of Blood rageth and ruleth over us, &c.*

Mr. Att. Gen. Take this Preparative of The Hue and Cry after Sir Arthur Haslerig, and read Page 2.

Clerk. *Those Men now sitting at Westminster are no Parliament on the Principles of Law or Reason.*

Mr. Att. Gen. Read Page 3 and 4.

Clerk. *They promise to amend, and proceed according to Law; but Sir Arthur Haslerig having no regal or parliamentary Commissions, not so much as from the present Nothing or illegal Juncto, &c.*

Mr. Att. Gen. Read Page 41, of The Legal and Fundamental Liberties of England, &c.

Clerk. *That the present Supreme Authority fought against both King and Parliament, rooted out all legal Magistracy, and left none but themselves; and could be compar'd to none but Murderers and Robbers, having no more just Right than so many Algier Pyrates, &c.*

Mr. Att. Gen. Read Page 56.

Clerk. *That that Company at Westminster, who gave Commission to try and execute the King, were no more a lawful Parliament than one chosen by a Company of Thieves, to judge and hang any Person they had prevail'd over by force, &c.*

Mr. Att. Gen. Read the Title Page.

Clerk. *The Legal Fundamental Liberties, &c. as in the Indictment.*

Mr. Att. Gen. Read Page 2.

Clerk. *Sir, I will still stile you Mr. Speaker, altho' but to Col. Pride's Juncto or Parliament, and not the Nation's, for they gave him no Power to issue Writts to elect a Parliament. (And again) I desire you'll acquaint the House that Oliver Cromwell's a willful Murderer, &c.*

Mr. Att. Gen. Read Page 28.

Clerk. *The King never acted the like Tyranny, and yet by St. Oliver's means lost his Head; and Oliver and his Parliament have pluck'd the House of Lords up by the Roots, &c.*

Mr. Att. Gen. Read Page 37.

Clerk. *That they have had as much Power over their Parliament now sitting, as a School-Master ever had over his Boys, &c.*

That the Power of Thieves and Robbers was as lawful as that Authority which erected the High-Court of Justice.

The Speaker issues Writts to call a Parliament. Page 617.

The King never acted so tyrannically as St. Oliver.

The TRIAL of

Mr. Att. Gen. Read Page 38.

Clerk. *The present Men in Power have trod all Liberties under Foot, and set up their Tyranny by the Sword, &c.*

L. Col. Lilb. Pray, Sir, are those Quotations verbatim in the Indictment?

Whether Evidence can be given of Words not laid in the Indictment, if they are contain'd in the Books charg'd in the Indictment.

Mr. Att. Gen. No, we say you publish'd those among other Clauses and Things in the Books, and produce no Books but those charg'd in the Indictment. Read Page 68 and 72.

Clerk. *That the High-Court of Justice is unlawful if those who set it up were a legal Parliament, which they were not, but a pack of traiterous tyrannical Usurpers, &c. and they being no Parliament, the other is no Court of Justice.*

Mr. Att. Gen. Now read in *The Salva Libertate*, at the Mark.

Clerk. *That a Paper Warrant, from any pretended Power now visible, was not valid, because Fairfax had broke the Magistracy, and set up pretended Magistrates, and amongst 'em the Attorney General, in opposition to whom I will spend my Blood, &c.*

Mr. Att. Gen. observ'd, That in these Books 'twas said the present Government was a Mock Power, a tyrannical, usurp'd and unlawful Authority; That they were Murderers, Thieves and Robbers, no Parliament, but Thomas Pride's Junto, Destroyers of the Liberties, &c. and he hop'd the Court and Jury were sensible that the Proof was clear, as to Mr. Lilburne's publishing those Books, which he thought was sufficient without further Charge; however he should proceed to prove likewise, that Mr. Lilburne had plotted and contriv'd to raise Forces to subvert the present Government, tho' what had been already said (being declar'd to the Army) was sufficient Proof thereof, and order'd the fifth Page of his Book intitled *An Impeachment of High-Treason*, &c. to be read; wherein he says, "That he hop'd the People would make the Scheme in his Book, call'd *The Agreement of*, " &c. their final Centre for a Settlement of Peace " in the distracted Nation, &c. for that in the " late Wars the King's Party were merely selfish, " the Presbyterians no better, and the present Inde-

†

pendents

"pendents only dissembled an Interest for the People's Liberties, when 'twas chiefly for themselves, and to set up the false Saint and villainous Murderer, Traytor, &c. Oliver Cromwell, &c.

Mr. *Att. Gen.* order'd the seventh and eighth Pages to be read, where he says, "That the People of London should write to their Friends to send two Agents from each County, to consider with those Agents they themselves should chuse, to settle the Principles thereof, that what they concluded on might be as a Standard to flock to, and not to side either with the Pride and Fooleries of the present Power, join'd with Owen Roe O-Neale, or with the Prince's Will, unless he or they would acquiesce to those settled Principles; and, on those Terms, he did not see but they might justly join with the Prince, who had a large Pretence of Right; and believ'd, if he came in by the Hands of English Men, and by Contract of the said settled Principles, three great Plagues would be avoided, viz. Free-Quarter, Taxes and Excise, and the People again live in Peace and Safety, whereas now under St. Oliver there's nothing but cutting of Throats, and a daily Increase of Bondage and Slavery, &c.

Page 619.

Mr. *Att. Gen.* Now, my Lord, we shall come to his Agreement of the People, &c. which strikes at the Root of all Government.

L. Col. *Lilb.* Pray, Sir, see if it be not licens'd; and if so, question the Licencer.

Mr. *Att. Gen.* We shall question the Author; read Page 2 and 3.

Wherein he says, "That the Supreme Power shall be lodg'd in the People's Representatives, to the number of 400 Persons and no more, the Places for and manner of Election, with the Salary for Subsistence, to be settled by the present Parliament, who are to act as a Parliament till August 1649, and then end; and the new Representatives to commence and sit the first Thursday after, and if this Parliament should omit or be hinder'd from settling such Election, that they should be elected at the same Places, and in the same manner as usual, and the like Number also;

Page 620.

The TRIAL of

" but that such Persons should not be Electors or
 " elected as are excepted in the first, third, and
 " fourth Heads of the said Book, call'd *The Agree-*
 " *ment*, &c. and that all Laws made or to be made
 " contrary to this Agreement should be void.

Mr. *Att. Gen.* My Lords, Mr. *Lilburne*, in this
Agreement, regulates the Number of the Supreme
 Government, orders the time of Dissolution of this
 Parliament, and when his own shall meet; and
 that all Laws contrary to this shall be void; and
 desires in his Book before, that this Agreement may
 be the Banner or Center to prosecute the Design for De-
 struction of the present Government, which is Treason;
 and now, my Lord, we shall proceed to shew the
 Tendency of his Out-cry. Read Page 11.

The Substance of this is, " That the young
 " Men, &c. are oblig'd to exert themselves, for
 " their own and the Nation's Advantage; and
 " neither to address, or suffer the Tyrants in Power
 " to be address'd or petition'd, but to chuse some
 " of the ablest amongst themselves, who would
 " venture their Lives to oppose the present Usurpers;
 " and desires the Soldiers (if they have any Com-
 " miseration) to assist in their Redemption from Slavery;
 " And that the Soldiers, especially those who sign'd
 " *The Solemn Engagement*, should chuse two out of
 " each Troop and Company to correspond and con-
 " sult with the said young Men's Friends, for
 " establishing the Liberties and Freedom of the
 " People.

Mr. *Att. Gen.* Read Page 9 and 57.

Page 521.

The Substance is, " That they, the young Men,
 " are resolv'd to instigate their Fellow-Apprentices
 " of the Out-Parishes to chuse Agents likewise,
 " and desire by Letter each County in England to
 " do the same; which Agents should, with their
 " Burford Friends, all meet, to consider the spee-
 " diest Method of chusing a new Parliament, ac-
 " cording to the said Agreement, seeing the present
 " pretended Parliament only share the publick Treasure
 " and most beneficial Places among themselves,
 " without redressing Oppressions, or receiving Pe-
 " titions of Complaint; for notwithstanding the
 " many Oaths, Promises, &c. of the present Com-
 " monwealth,

"monwealth, to maintain the Liberties and Good
 "of the People, that they are *perjur'd Tyrants*, &c.
 "and ought to abhor'd by all Men.

Mr. *Att. Gen.* observ'd, That the long Forbearance of Mr. *Lilburne's* traitorous Provocations was sufficient Testimony of the State's Clemency; and that he could scarcely contain himself to hear such dangerous Expressions and insufferable Treasons.

L. Col. *Lilb.* The Exclamations of People, who are oppress'd, is not Treason within the old Laws of England.

Lilburne urges that none of his Expressions were Treason by the ancient Laws of England.

Mr. *Att. Gen.* observ'd, That to call the Parliament Tyrants, Usurpers and Traytors, and to stir up the People to destroy them, might be brought within the Statute 25 *Edw. III. chap. 2.* and that Mr. *Lilburne* had vilified General *Fairfax* and his chief Officers, and call'd the Lord General *Cromwell* Murderer; and that he would prove Mr. *Lilburne* had endeavour'd to draw the Soldiers from their Obedience, which was High-Treason in the last Clause of the Act. Read *The Epistle to the Legal Fundamental*, &c.

The Substance is, "That he positively accus'd
 "Cromwell for the willful Murder of Mr. Richard
 "Arnold near Ware.

Page 623.

Mr. *Att. Gen.* observes that Mr. *Arnold* was condemn'd by a Council of War for a Mutineer.

L. Col. *Lilb.* It being done in a Time of Peace, when the Courts of Justice are open, is contrary to *The Petition of Right*; and that the Earl of *Strafford* (who was as great a General) suffer'd for such like Acts; therefore if the Judgment of *Strafford* or *The Petition of Right* be legal, the shooting *Arnold* is absolute Murder.

Clerk reads, *That Cromwell and his Confederates were guilty of most of the Crimes (in kind) charg'd against the late King, tho' under a new Denomination.*

Mr. *Att. Gen.* Read Page 35, 37 and 38.

Here he says, "That no Promises could bind the
 "chief Jugglers and Leaders of the Army; and that
 "he (*Lilburne*) left the Council they had call'd,
 "esteeming 'em a Pack of dissembling Knaves,
 "especially *Commissionary Ireton*; and dar'd aver that
 "the General and Chiefest of the Council fully de-

" termin'd to spend their Heart's Blood rather than
 " condescend to the Book intitl'd *Agreement of the*
 " *People for a just Freedom*; for that a new and just
 " Parliament was more dreadful to them than the
 " Day of Judgment; and that neither Korah,
 " Dathan and Abiram of old, nor the Anabaptists,
 " with John of Leyden, and Buperdullion at Munster,
 " nor Jack Straw or Wat Tyler were comparable to
 " the General and his Council for Rebellions and Treasons
 " against all kinds of Magistracy.

Mr. Att. Gen. We shall now proceed to his Out-
 cry, directed to the Soldiers of the Army. Read
 Page 8.

Page 623.

The Substance of it is, " A grievous Complaint
 " of the Oppressions the Nation now lies under,
 " and a Recommendation thereof to the Soldiers,
 " especially the private Men in the General's Re-
 " giment of Horse, for that the Nation was now
 " not only expos'd to domestick Broils, but to
 " foreign Invasions from France, Spain, Denmark,
 " Swedeland, &c. And appeals to the private Sol-
 " diers of the Army for Help, and that they would
 " speedily chuse two out of each Troop, &c. as
 " before in Page 620.

Mr. Att. Gen. Read the second Page of his Im-
 peachment against Oliver Cromswell, &c.

" In which there's an Account of his Apprehen-
 " sion by Soldiers, his being carried to Derby House,
 " and afterwards committed, as Lilburne himself re-
 " lates in Page 584.

Mr. Att. Gen. Read Page 3 of his Out-cry, di-
 rected to the Soldiers of the General's Regi-
 ment.

Page 624.

Here he tells the Soldiers, " That they must,
 " rather than endeavour to suppress the Destroyers
 " of the Liberties of the People; that if any one
 " complains, his House is immediately beset with
 " armed Janizaries, to take away the People's
 " Courage, and prevent the maintaining their Free-
 " doms.

Mr. Att. Gen. My Lord, the last Clause of the
 Act is, That if any Person, not being an Officer,
 &c. shall endeavour to stir up Mutinies in the
 Army, &c. it is High-Treason; you have heard the
 Calumnies

Calumnies (read in these Books) to asperse the Officers and stir up the Soldiers against 'em; as likewise the reproachful Abuses thrown on the noble General, not to mention the Advantage might be made of the Words which have slip'd from himself, or more Witneses which I could have call'd to prove Mr. Lilburne's publishing the Books, which (tho' he will not own them) I think is already sufficiently prov'd against him.

[Here Lilburne compar'd his Behaviour to this Court, to that of our Saviour's before Pilate, who confess'd nothing; and added, Thou, Mr. Prideaux, say'st it (they are my Books) but prove it.]

Mr. Att. Gen. I think here are too many Proofs; *Prideaux* intreats the Jury, if they have any regard to the Government, to find the Prisoner Guilty.

Foreman. We desire the Act of Treasons to make use of.

L. Col. Lilb. objected, That according to the third Part of Co. Inst. a Man ought to be try'd in the County where the Treason is committed; that his pretended Crimes were laid in three different Counties; and that there was but one Witness to most of the particular Treasons; and therefore he conceiv'd it just, and thought it reasonable they should perform their Promise and assign him Council. That this and greater Privileges were granted to Major Rolfe and Duke Hamilton. That 'twas impossible for him to give an extempore Answer to so long a Charge; and besides, that he had stood five Hours wasting his Spirits already; and now to stand to answer a five Hour's Charge, was a Burden too heavy for a Horse; and he hop'd they did not design to hang him because he was tir'd and had not Strength left to pronounce his Defence.

Ld Keble. The Books are but three, which can be no great Charge to your Memory, neither do we expect the Jury should remember the Particulars; what you have to do is to acquit yourself first of publishing and owning these Books, and then of the Matter contain'd in them; and 'till this is clear'd, we cannot allow you any Council.

Lil-

Lilburne still insisted, that to have Council allow'd him was his Right by Law, and no greater Privilege than was given *Major Rolfe, &c.* and said, if he had Council, he question'd not (by that Means) clearly to acquit himself of the Treason alledg'd against him.

Ld Keble. Mr. *Lilburne*, you have often urg'd this, and have been as often answer'd ; and I shall add, you have in this Court so many grave Judges, as never Man in your Condition had.

L. Col. Lilb. I am neither daunted at the Number of my Judges, their glittering Robes, the Majesty of their Presence, or their austere Deportment towards me.

Ld Keble. You are try'd thus publickly that all Persons may observe the fair Play allow'd you, and unless you take the Matter alledg'd as Proof, you must make your Defence to clear the Fact, before you shall or can be assign'd Council.

L. Col. Lilb. I hope (as the Length of my Tryal has exhausted my Strength) you will not put me to a present Answer ; I desire a Week's time ; or (if not so) till to-Morrow Morning only.

Ld Keble. No, you must do it presently.

L. Col. Lilb. Then permit me to recollect my self, and peruse my Notes in a private Room for an Hour, and to refresh my Spirits [which being refus'd, he added with a mighty Voice.] Well, if you are resolv'd to have my Blood, right or wrong, I appeal to the Lord God Omnipotent, and a mighty Judge between you and me, to require and requite that Blood on you and your Posterity to the third and fourth Generation ; [presently after which a Scaffold fell, but he continued perusing his Papers.] If you will not allow me Liberty to withdraw, and ease Nature, I desire I may do it in the Court.

Then a Pot was fetch'd him, and he had some little time given him to look over his Papers in Court.

Ld Keble. Take away his Chair ; the Court cannot wait his Motions ; speak what you have to say.

L. Col. Lilb. I desire to be satisfied whether (as by Law allow'd) after I have pleaded to Matter of Fact,

He desires to withdraw, and peruse his Notes, which being denied, he sends for a Chamber-Pot into Court.

Fact, you will permit me to speak in my Behalf to the Jury, on whose Integrity my Life depends; and who are Judges of Law as well as Fact, and you only Pronouncers of their Will.

Ld Keble. My Lord Coke says the Jury are Judges of Fact, but it is the Court's Opinion they are not Judges of Law.

L. Col. Lilb. You, who call your selves Judges of Law, are only Norman Intruders, Cyphers to pronounce their Sentence who are Judges of Law as well as Fact. Affects the Jury are Judges of Law as well as Fact.

Judge Jermin. Was ever such damnable, blasphemous Herefy to call the Judges Cyphers, the Judges have ever been Judges of Law, from the first Settlement of the Law in England, and the Jury only Judges of Fact.

L. Col. Lilb. If you will permit me to read, I will disprove it from your own Law: Here is the first part of Coke's *Insti'*, which all Lawyers allow to be good Law.

Ld Keble. Convince us that Law concerns the Jury, and you do somewhat.

L. Col. Lilb. Sir, I apply my self to the Jury; let me read your own Law to them, and I shall leave my self to their Consciences: Coke says in the first Part of his *Inst. Sect.* 366. fol. 226, 227, 228, in his Exposition of *Plowden*.

Ld Keble. Those Quotations are not for your purpose, neither is there any such Book; proceed to the Matter of Fact, and let this drop; you shall not read.

Judge Jermin. There is no Book intituled Coke's *Commentary on Plowden*, and you cannot be permitted to broach that erroneous Opinion, that the Jury are Judges of Law. By a general Verdict the Jury take upon them the Matter of Law as well as Matter of Fact.

L. C. Lilb. Then here I'll die: Jury observe, it is easy to mistake *Plowden* for *Littleton*, and these are his Words: [In this Case the Recognitors of the Affize may say and render to the Justices their Verdict at large upon the whole Matter;] and says in another Place, [That the Jurors have Cognizance of the Lease as well as of the Condition;] and says further, [That a special Verdict, or at large, may be given in any Action and upon any Issue, be the Issue General or Special.] And
in

in Sect. 368, Littleton has these Words, [*Also in such Case where the Inquest may give their Verdict at large, if they will take upon them the Knowledge of the Law, upon the Matter they may give their Verdict generally;*] and Coke saith thereon, [*Altho' the Jury, if they will take upon them (as Littleton saith) the Knowledge of the Law; may give a general Verdict.*] This being to my Purpose, I have done, Sir.

Ld Keble. You have spent time to no purpose; I thought you had known Law better.

Lilburne's Defence as to the Facts prov'd against him.

L. Col. Lilb. I shall now, Sir, proceed to Matter of Fact; and desire the Jury will take Notice, that by the Statutes of 1 Edw. VI. ch. 12, and 5 & 6 of Edw. VI. ch. 11. no Man shall be condemn'd of Treason, but by the clear Proof of two legal Witnesses; and in Coke, 3 Instit. ch. High-Treason, fol. 12. it is said it must be by the direct and sufficient Proof of two Witnesses, and not on Surmises, or conjectural Inferences; and that he be attainted by due Course of Law, and by no absolute Power, or other means whatsoever; and in fol. 24. that there must be two lawful Witnesses, as well on the Tryal as Indictment; and in fol. 240, he says the same Attainders of Treason must be upon plain and direct Evidence; for though Restitution of Lands may be had, there can be none of Life.

Ld Keble. The Proof has been so plain as (I hope) it will convince the Jury, and that they will find the Prisoner Guilty.

Judge Jermin. What you have urg'd makes much for the Jury.

L. Col. Lilb. I shall now answer your Proof in the same manner the Witnesses swore. Mr. Newcomb swears I was with Captain Jones, from whom he receiv'd the Out-cry; that Captain Jones (not I) agreed for the Printing, and that I took away a single Sheet before 'twas corrected, which was useless, and no true Copy of that charg'd in the Indictment; neither was the Title there, or knows he if the first Part of the Book had any Dependence on that Sheet; so that 'tis uncertain whether that Sheet be Part of the Book contain'd in the Indictment; neither is there more than one Witness to this; and if it be the same, I was only present with
my

my Friend accompanying him, and you may find the Names of ten that own the Book ; so it does not affect me.

The three Soldiers depose the same in Substance, that I gave *Lewis* one out of my Pocket, and told him where I believ'd he might buy more ; they were publickly sold all over the City ; so, I hope, the Jury, being Men of Conscience, will not think that, or giving away a Sheet and half of Paper, or drinking with an Acquaintance, Crime sufficient to take away my Life : For though they say I ask'd them a Question, viz. when they received any Pay, yet I us'd no aggravating Expressions, or mutinous Provocations, or malicious Council, to incense them against their Officers, or stir them to Rebellion ; so that it is no Evidence of Treason against me.

The next thing charg'd is, the *Salva Libertate*, which the Lieutenant of the Tower says I deliver'd to him ; he is but one Witness : And as I have a Suit now depending against him for four or five thousand Pound, he is a profess'd Adversary, therefore no good Witness ; neither does he swear the Hand is mine, or that I writ it ; so his Testimony is invalid. I likewise commenc'd a Suit against Colonel *Titchburn* for the like Sum ; so that as he is my Adversary he is no legal Judge : And I desire he may be order'd off the Bench. I believe likewise that Part of the Tower, where the Lieutenant says I gave him those Papers, is not within the Liberties of the City, then why should I be try'd by a London Jury ? not that I have any Objection against the Gentlemen of the Jury ; but if the Fact be committed in Middlesex, the Tryal ought to be by a Jury of the same County.

Thomas Daffern deposes, that he went with me to *Winchester House* in *Southwark*, where I deliver'd him a Book to carry to Col. *Ayres* ; he doth not say the Book is mine or of my Writing ; but however *Winchester-House* being in *Surrey*, is not tryable by a London Jury, therefore I shall say no more to that ; neither need I give any Answer to the Testimony of the Marshal, or Governor of *Warwick Castle* ; or to the Evidence of Colonel *Purefoy*.

The next Charge is, the Preparative to an Hue and Cry, &c. which the Lieutenant of the Tower says

Page 629.

Page 630.

says I gave him in the Tower, which I am certain is in Middlesex, so not to be try'd by a Jury of Citizens of London; neither knows he if this be the same Book I deliver'd him.

James Nutleigh and Edward Radley depose they saw me deliver a Preparative to their Master's Hands, and say I own'd it to be mine, the Printer's Errata's excepted; which the Lieutenant of the Tower swears I express'd to be many. Now I question whether the Temple be within the Liberties of London; however, the Errata's, which are many, for ought the Witnesses or Jury know, may be those very Clauses with which I am charg'd, for they are not prov'd to be otherwise; so that they not proving six Lines thereof to be mine; and I owning no more than was free from the Errata's, which were many, their Testimonies are of no Weight.

What they would next fix on me is, *The Legal Fundamental Liberties*, &c. and there is no Proof to that but from Relations out of the other Books, so shall give no further Answer to that.

He observes that one of the Books he is charg'd with, was publish'd before the Acts were made whereupon he is indicted.

Page 631.

Lastly, for the Agreement of the People, it is dated May 1649, Licens'd and printed before either of the Acts on which I am indicted bear Date; so I may say with St. Paul, *Where there is no Law there is no Transgression*. I shall only add, there has been no Proof that the Books charg'd against me are truly dated; therefore if the Books were really prov'd mine (which they are not) yet not being prov'd to bear Date exactly with the Original Copies, they might be made before the Acts commence; by which I have fully made appear to the Jury, that there is not any Proof to fix the least Guilt upon me; and believing them to be Men of unbiass'd Principles, shall leave it to their Judgments and Consciences.

I beg leave likewise to acquaint the Jury, that could I have had time allow'd me to produce my Witnesses, they would have testified several material Things for my Justification. And though I think I have sufficiently clear'd my self from the Facts charg'd upon me, by shewing there must be two express Witnesses to each particular Act of Treason, as I have mention'd in Major Rolfe's Case, (of which Mr. Nichols, who sits as Judge here, is sensible)

sensible) yet I shall desire the Gentlemen of the Jury to consider the Intention of the Law, as laid down in Co. 3 Inst. fol. 6. *Et actus non facit reum, nisi mens sit rea*, 'tis the Intention, not the Act that shews the Guilt. During the whole Course of my Life I have endeavour'd the Prosperity of the Nation; never endeavour'd the Prejudice of any particular Person, yet was proclaim'd a Traitor thro' all the chief Towns in *England*, and imprison'd for Crimes which have not since been laid to my Charge, and now (for complaining of my hard Usage only) there have been *Acts made long since my Confinement, in order to charge me with High-Treason*, though I have often declar'd my Willingness to determine all Differences. [Here he makes a Narrative of his Application to the Parliament; the Petitions of many thousands of his Friends for his Tryal or Releasement; his signal Services in the Parliament-Army, &c. as before recited in Page 584, 585, and 594; and concludes he was made close Prisoner in the Heat of Summer, without either Wife or Child being permitted to see or comfort him.

Page 632.

Quere.

He urges his Services to the Commonwealth.

Page 613.

Ld Keble. Mr. Lilburne, instead of making your Defence, you tell a long Story of your own Life; and should we reply to each Particular, 'twould take up much time, but do you no Service; therefore leave your Discourse, or Answer to the Proof of the Fact.

L. Col. Lilb. Though I have told it you before, the Jury did not hear it; and as my Life lies on it, it is material to my Preservation.

Ld Keble. 'Tis nothing to the purpose, were it in order to your Defence you should not be hinder'd.

L. Col. Lilb. Well, if you will not let me proceed, my Blood be upon your Heads; and I desire the Jury will take Notice of your unjust and cruel Usage.

Ld Keble. You shall not be refus'd any thing that is material.

L. Col. Lilb. [Here he exclaims of the Barbarity and Tyranny with which he had been oppress'd, viz. that his Estate was taken from him (which should have maintain'd him in the Tower) and

and the customary Allowance refus'd him ; that his Solicitor was not permitted to speak for him, though the Law allow'd any By-stander to do it ; that he was refus'd Council, &c. though it was his Right ; and resigns himself to the Care and Consciences of his Fellow-Citizens, the honest Jury, who (he again said) were Judges of Law as well as Fact ; whom he prays God to direct to act according to Justice.]

[The Audience cried *Amen, Amen*, and gave a great Hum, which made the Judges apprehensive, and caus'd Major-General Skippon to send for three Companies of Soldiers more.]

Mr Prideaux makes his Observations on the Evidence for the Commonwealth.

Page 635.

Then Mr. Attorney Prideaux sum'd up, and made his Observations on the Evidence for the Commonwealth, and tells the Jury that the Statutes of *Edw. VI.*, which requir'd two Witnesses to every Fact, were render'd of no Force by a later Statute, 1 & 2 *Ph. & Mar.* And observ'd, that tho' the Book intitled, *The Agreement of the People*, was dated the first of *May 1649*, before the Ordinances were made on which he was indicted ; yet in his other Books, which were publish'd since, he quoted that Book, and refer'd to it ; and so had republish'd it since the Ordinances were made. — And he tells the Jury that the Fame of that gallant Army, and those Officers who had been so faithful and true to their Trust, and had so much advanc'd the Peace and Happiness of the Nation, and whom God had bless'd and own'd in a miraculous manner, were to be put in the Balance against Mr. *Lilburne*, and the Services he pretended to have perform'd.

Lilburne takes notice that *Prideaux* was one who voted the Army Traitors.

[Here *Lilburne* interrupted Mr. *Prideaux*, and told him, notwithstanding his Encomiums on the Army, he [*Prideaux*] was once one of those who voted them Traitors, and was set down by the Commissioners of the Army as a Malignant : But he said, it seem'd Mr. *Prideaux* had recanted his Errors, and was become a good acquiescing Creature, or he had not been there that Day ; and demanded, if, notwithstanding that boasted Faithfulness, the Army had not twice rebel'd against their Creators, their Lords and Masters?]

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Still Mr. *Attorney* went on, shewing what great things the Army had done, who, notwithstanding, he said could not escape Mr. *Lilburne's* vile Tongue and Pen, any more than the Parliament and Magistracy: And therefore he told the Jury, as they rendred the Honour of them all, and if they had any Remembrance of the great and wonderful things that renown'd Army had done; and with what Confidence and Despight to all Law and Authority, *Lilburne* had published these Books, he hoped they would take care he should smart for it; and concluded, that the Court were Judges of the Law, as the Jury was of Fact; and pray'd God to direct all their Judgments.

Page 636.

Then Mr. *Kettle* directed the Jury, and told them that the two Statutes of *Edw. VI.* which required two Witnesses, was repealed by that of *Queen Mary*, which enacted, That the Common Law should be the Rule in all Tryals of Treason: And that by the Common Law one Witness, with concurring Circumstances, was sufficient: He tells them, that this was the greatest Treason that ever was attempted by one Man; that it struck at no less than the Subversion of the Commonwealth and State, and to have laid them all in Blood: That he did not observe any Fact the Prisoner was charg'd with stood upon a single Testimony, but was supported by many aggravating Circumstances; and left it to their Consciences if he was not Guilty of the most transcendent Treason that ever was hatch'd in *England*.

Mr. *Kettle* directs the Jury.

Says that one Witness, with concurring Circumstances, was sufficient in Treason.

The Jury desir'd, that they might have a Quart of Sack amongst them to refresh them before they went out; but Judge *Fermin* answer'd, that in Civil Cases indeed he had known the Jury permitted to drink before they went out, but never in Capital Cases; but said the Court would permit them to have a Light with them, if they pleased.

Page 637.

The Jury desire some Wine before they withdraw, but are told they could have no Refreshment in Capital Cases.

Lilburne mov'd, that another indifferent Person might be join'd with the Officer who was to keep the Jury; for he apprehended the Officer to be his Enemy; which the Court granted, and another was sworn.

Then the Jury withdrew (being about five a Clock), and the Sheriffs were commanded to carry

The *TRIAL* of

their Prisoner into the *Irish* Chamber ; and the Court adjourn'd till six.

At six the Court returning, and the Prisoner being brought to the Bar again, the Jury came in with their Verdict ; and it being demanded, If the Prisoner was *Guilty* of the Treasons with which he was charg'd ? The Foreman answer'd, *Not Guilty of All of them.*

Clerk. Not of all the Treasons, or any of them, that are laid to his Charge ?

Lilburne is acquitted.

At which the People shout.

Foreman. *Not of All, or any of them.*

At which the People unanimously shouted for half an Hour without Intermiſſion. Notwithstanding the Acquittal of the Prisoner, the Lieutenant of the Tower was commanded to carry him back to the Tower, and Major-General Skippon to guard him; and all others were commanded to assist them, if requir'd. And the Mob attended them with loud Acclamations to the Tower Gates, and made abundance of Bonfires in the Streets that Night. And on the 8th of November, the Council of State, finding the People uneasy at their continuing Lilburne a Prisoner, directed their Warrant to the Lieutenant of the Tower to discharge him: Which Warrant was sign'd by John Bradshaw the President.

And make Bonfires for Joy.
Page 525.

He is discharg'd out of the Tower about a Fortnight after.

An Ordinance for his Banishment.

It appears, that some time after the Parliament made an Ordinance for the Banishment of the said John Lilburne ; and enacted that he should be adjudged *Guilty* of Felony, if ever he was found in England after such a limited time.

Try'd again for Felony in remaining in England after the Ordinance.

He is acquitted. The Jury brought before the Council to give their Reasons.

Page 629.

But refuse to say any.

Upon which Act or Ordinance the said John Lilburne was taken into Custody again, and brought to his Tryal at the Old-Bailey, on Saturday the 20th of August 1653 : And the Jury acquitted him of the Felony ; at which the Parliament were so incens'd, that they made an Order that the Jurors should be brought before the Council, and give their Reasons why they acquitted him of the Felony, against plain Evidence. But the Jurors being separately examin'd, would give no other Answer, but that they look'd upon themselves to be Judges as well of Law as Fact ; and that they went according to their Consciences ; And as to the Reasons that induc'd them to acquit him, they would give none.

The

*The Tryal of CHRISTOPHER LOVE,
Before the High-Court of Justice, in West-
minster-Hall, June 20, 3 Car. II. 1651.*

Page 640.

THE Court being set, the Lieutenant of the the Tower was commanded to bring his Prisoner to the Bar; then the Acts or Ordinances were read, which made it Treason to conspire against the Commonwealth; after which the Charge was read, the Title whereof was,

A Charge of High-Treason, &c. exhibited to the High-Court of Justice, by Edmund Prideaux Attorney General for the Commonwealth, for and on the behalf of the Keepers of the Liberties of England, by Authority of Parliament, against Christopher Love late of London, Clerk,

The Charge set forth, "That the said Christopher Love, as a false Traytor to the Commonwealth, &c. designing to stir up a new and bloody War, did several Days and Times, in the Years 1648, 49, 50, and 51, at London, and divers other Places, together with William Drake, Henry Jermin, Henry Piercy, John Gibbons, Edward Massiey, Richard Graves, Syllus Titus, and James Bunce, and others his Accomplices, traiterously and maliciously contrive and endeavour to raise Forces against the Government, since it had been settled in a Commonwealth and Free-State, without a King and House of Lords, in order to subvert the same; and to effect his said traiterous Purposes, he the said Christopher Love, together with the said other Conspirators (since the Death of Charles Stuart the late King, who, for his notorious Treasons, Tyrannies and Murders, was justly condemn'd and executed) did traiterously and maliciously declare, publish and promote Charles Stuart, eldest Son of the said late King, to be King of England, without Consent of the People and Parliament first had; And also did traiterously and maliciously invite, aid and assist the Scots, being Foreigners and Strangers, to invade this Common-

An Impeachment for High-Treason and other Crimes, prefer'd by Prideaux Attorney of the State.

"wealth, and adhered to the Forces of the Enemy
 "rais'd against it: And further, that the said
 "*Christopher Love*, to accomplish his said traiterous
 "and wicked Design, did, between the 29th of
 "March 1650, and the first of June 1651, traite-
 "rously and maliciously hold Correspondence and
 "Intelligence with the said *Charles Stuart* the Son,
 "by Letters and Messages, Instructions and other-
 "wise; as also with the late Queen his Mother,
 "and with the said *Henry Jermin*, *Henry Piercy*, and
 "divers other Persons, being of Council and abi-
 "ding with *Charles Stuart*. And did also traiterously
 "and maliciously hold Correspondence with the
 "Earls of *Argyle*, *Lowden*, and other *Scotch* Gentle-
 "men, whom the said *Christopher Love* well knew ad-
 "her'd to the *Scotish* Nation, against the Parliament
 "and Commonwealth of *England*, and did abet, aid
 "and assist them with Money, Arms, &c. as he
 "did also the said *Titus*, *Massej* and others, in Con-
 "federacy with the *Scots* against this Nation; all
 "which Treasons were laid to be against the Peace
 "of the Commonwealth and Free-State, Parliament
 "and People of *England*, and in Breach and Con-
 "tempt of their Laws and Statutes, &c.

"And the said *Attorney*, saving the Liberty of
 "exhibiting any other Charge, and of replying, &c.
 "did, for the said Treasons, on behalf of the
 "Keepers of the Liberties of *England*, impeach the
 "said *Christopher Love* as a Traytor and publick
 "Enemy to this Commonwealth and Free-State of
 "*England*, praying he might be brought to Tryal,
 "Judgment, &c.

Clerk, *Christopher Love*, you stand charg'd, &c. Are
 you Guilty or Not Guilty of the Crimes and Treasons
 laid to your Charge?

Love. I desire the Liberty of being heard before
 I plead, and intreat God Almighty to endue me
 with Piety, Humility and Wisdom, and enable me
 to go thro' the Tryal as becomes a Minister of the
 Gospel. I believe as this Prosecution of me is a
 Grief to the Godly, so it is a Joy to the Wicked.

Kelle.

Ld President. We have invok'd the Lord to direct
 us, you and all Men; but if you would glorify
 God,

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God, confess as *Achan* did, for you must now plead *Guilty* or not *Guilty*.

Love. I desire the Case of *Achan* may not be imputed to me, where God was the Prosecutor; and hope a Minister may have as much Liberty as was given to Lieutenant-Colonel *John Lilburne*.

Ld President. Ministry is an Office only, we do more for a Christian than for a Minister, Mr. *Lilburne* had Favour granted which Time won't now permit.

Love. I am even like *Jeremiah*, born in Strife and Contention, and hope God will give me Fortitude (as he did to *Jeremiah*) to withstand my Opposers, and not permit 'em to prevail against me.

Mr. Att. Gen. My Lord, this is nothing to the Purpose; and what he instances of *Lilburne* was done by way of Narrative; but, Mr. *Love*, if you think to gain time to insinuate into Favour of the Audience, you are mistaken; I desire, my Lord, he may proceed to his Charge as the Law directs.

Page 642.
*Edmund Tri-
deaux.*

Love. I desire I may clear myself from any Misrepresentations which may have been given.

Ld President. We wish you as well as our Brother, but you trifle away the Time for nothing.

Mr. Att. Gen. My Lord, I act only according to Law and the Duty of my Place, and alledge nothing against him but what he stands charg'd with; I desire he may be held to his Duty as a Prisoner, viz, to plead and put himself on his Tryal, and let him talk to clear himself afterwards.

Love. Mr. *Lilburne* did not plead first, I desire the same Liberty.

Clerk reads, Christopher Love, you stand charg'd, &c.

Love. If Matter of Law arise in the Indictment, I have Liberty to move for Council, for it's said in

Co. 3 Inst. [The Prisoner, when he pleads *Not Guilty*, whereby he denies the Fact, after the Plea of *Not Guilty*, can have no Council; but if he have any Matter of Law to plead before, he may urge it.] And says further [that the safest way is to plead the special Matter for overthrowing of the Indictment; and to require Council, and a Copy of so much of the Indictment as is requisite to frame his Plea on, both

If the Prisoner have any Matter of Law to plead, in relation to his Charge, he must do it before he pleads *Not Guilty*.

which ought to be granted, because the Indictment is commonly found in his Absence.]

Ld President. But yours is in your Presence, neither is it more than a written Parchment till you have pleaded.

Desires Council
as to Matter of
Law.

Love. Sir, I think there are several Matters of Law arise in the Indictment, to which I desire Council assign'd me, for the Act 26 Mar. 1650, only forbids the Mission and Receipt of Letters, &c. to and from England or Ireland, which I conceive does not include Scotland.

Page 643.

Mr. Att. Gen. Then you acknowledge the Receipt and Mission of Letters to Scotland?

Love. Sir, I do not own it.

Mr. Att. Gen. There was an Act read that relates to Scotland; but if he'll acknowledge the Fact, and demur to its being within Cognizance of the Act, or Power of this Court, I'll join with him.

The Prisoner
demands why
he is not try'd
by a Jury, ac-
cording to Law.

Love. Sir, the same Act prohibits corresponding with any in Arms against the Parliament; now, I question whether the Scots were arm'd in opposition to the Parliament of England, or in their own Defence. I also question, from your Lordship's own Affirmation at the Tryal of *Lilburne*, that according to the Forms of Law, he must say he would be try'd by God and his Country, viz. by a Jury; why am I try'd otherwise? if that was Law in *Guild-Hall*, why not Law likewise in *Westminster-Hall*?

Ld President. That Tryal was by the antient Laws, this by Statutes newly made, to proceed against such Persons as yourself; and here you have twenty or forty of your Neighbours, according to Law.

He urges a Vote
of Parliament,
That they would
preserve the an-
tient Fundamen-
tal Laws and
manner of
Tryal.

Love. Sir, were I try'd by a Jury, I have Power to except against 35; and that being always allow'd a legal way of Tryal; and the House having declar'd the 9th of February 1648, that they would preserve the Fundamental Laws for Preservation of People's Liberties, &c. why am I now try'd contrary to that legal fundamental Method, viz. by a Jury?

Mr. Att. Gen. My Lord, the Parliament have not, nor cannot restrain their own Power; they have given him this way of Tryal, and should he except

except against 35, here would not be a Court left; a Prisoner ought not to be allow'd this Liberty; if he refuse to plead, let him plainly say it, and I shall answer accordingly.

Page 644.

Love. I refuse not a Tryal, if you allow me legal Liberties; I therefore desire Council here and in my Chamber, and then I'll plead.

Mr. Att. Gen. He has had a Fortnight's Notice, and Council not deny'd him, and has made Preparation, as is evident by the Acts he has perus'd: Council was refus'd at *Lilburne's* Tryal, where he was present to make Observations, in order to his Defence, and (as I am inform'd) *Lilburne* has been with him as Council in the Tower.

Page 643.

Love. There's more Law arises in the Charge against me, than in *Lilburne's* Case; several Things are laid to be done before the 29th of *March*, which are not within the Cognizance of the Court, and I desire to have Council assign'd by the Court, for those I sent to would not come to me unless they were; neither could they advise me, not having a Copy of the Charge.

Page 644.
He starts a Point of Law as to the Uncertainty of the Charge.

Mr. Att. Gen. My Lord, it's unusual to have Council, until out of the Matter of Fact some Point of Law arise; and for a Copy of the Charge it was never demanded before.

They refuse to assign him Council till he has pleaded and the Evidence is given.

Ld President. You might have had a Copy if you had ask'd it; and tho' a Tryal by Commission of Oyer and Terminer be by Grand and Petit Jury (both which are included in this Court) yet the Proceedings to plead are the same here as in that Method of Tryal; and you must first plead and hear the Evidence, and if Matter of Law arise upon it, we will assign you Council.

Love. In ordinary Courts the Judges are Council for the Prisoner; but you here are Judges both of Law and Fact, and I can't consult with you; therefore I desire a Copy of the Charge and Council.

Mr. Att. Gen. 'Twas never granted; and if you will not plead, I shall move for Justice.

Page 645.

Another Member. Mr. Love, your urging that corresponding with *Scotland* is not cognizable by this Court, is questioning the Power of the Court, which we shan't allow Council to dispute.

Low. If a Man be charg'd with Treason in the Court of Common-Pleas, he may demur to the Jurisdiction of the Court; so here, if I am charg'd with some Things not cognizable here, I may demur to the Jurisdiction, as to that Particular. There are some things in the Charge said to be done before the Act for constituting the Court was made.

Mr. Att. Gen. The Act expresses, that Offences relating to Scotland shall be tried as other Offences in the High-Court of Justice.

He objects that the Crimes in the Charge were to be prosecuted within a Year, and they charg'd him with Things done several Years past.

Low. The Acts mention, that if a Man be not prosecuted within a Year, the Accusation is void; now my Charge looking back to 1648 and 1649, I may demur to the Charge.

Ld. President. If the Evidence speak not to any thing since that time, your Exception's good; but that's unknown till we hear the Evidence.

Low. Whatever the Witnesses prove, yet being charg'd for Facts in 1648 and 1649, I am indicted for those Things I ought not; therefore desire Council to advise me if I may not acknowledge some part, and demur to some part of the Indictment.

A Member. My Lord, his Arguments proceed from his Ignorance, for Law cannot arise before the Fact be in question; for whether his Mission of Letters, at such a Time, be a Crime, will arise after the Fact is prov'd, which will be sav'd to him; but before that, his Request cannot be granted.

Page 646.

Low. I desire then to know the meaning of these Words in *Co. Inst.* [That the Prisoner at the Bar may have Council to overthrow the Indictment] it cannot be after pleading, for then the Witnesses are produc'd.

Mr. Att. Gen. The Indictment may be overthrown by the Witness; but sure he cannot think to have Law Lectures read and explain'd to him here: As to his Offences, they are laid from 1648 to 1651, and I shall apply the Evidence to such Times as are within the Time limited by the Statute. My Lord, I shall prove that he has continued

in a Series of treasonable Practices from 1648, till since the Time of his Imprisonment.

Love. Sir, though I expect not the Explanation, I expect the Benefit of the Law; and since that allows me Council to overthrow the Indictment, why should I be refus'd it?

A Member. Mr. *Love*, whether you have done the Facts charg'd against you we know not, or whether you have done 'em contrary to Law we know not, till we apply the Evidence to the Acts of Parliament; therefore do not insist on your Demand out of time, lest you are refus'd it in time, for it can't be allow'd till Matter of Law arise upon the Evidence.

Ld President. If each Felon at the *Old-Baily* was allow'd Council before he pleaded, there would be no end of the Sessions.

Love. The Jury there are Judges of Fact, but you here, of both Law and Fact. Pray, Sir, satisfy me (in what I find by Judge *Coke*) whether an Indictment can't be overthrown before pleaded to?

He quotes Co. Inst. again, that he may except to Errors in the Charge, in order to quash it before he pleads.

Ld President. You have taken no notice of what has been said to you. Read his Charge once more; if you'll not plead, we proceed to Judgment.

Clerk. Christopher Love, you stand charg'd, &c.

Love. I still believe Law does arise from the Charge, and desire Council.

Mr. Att. Gen. I desire Council may be refus'd him till he has pleaded.

Page 647.

Love. Mr. *Attorney* makes those Words good he told me in the Tower, viz. *Tho' you are too hard for me in the Pulpit, I'll be too hard for you at the Bar.*

Ld President. The Court will not be directed by Mr. *Attorney*, but by the Evidence; that, indeed, may be too hard for you; but the Court are Men of Conscience, and won't let you receive any Prejudice.

Love. I conceive if I plead to the Charge, I allow it to be legal, and desire Council may be allow'd me.

Mr. Steel, Recorder. In respect to your Calling, you have had more Favour than I ever knew allow'd to any Man; but you must of necessity plead either

He is told he must either plead generally, or specially, before Council can be assign'd him.

Page 648.

either generally or specially; if you put in a special Plea, the Court will consider it, and assign you Council; but if you put in neither a general or special Plea, to what purpose should Council be assign'd you?

Love. Sir, if a Man be charg'd with any thing not cognizable by the Court, he may demur, as to that Particular, tho' not to the Jurisdiction of the Court in general.

Mr. Recorder. Mr. *Love*, the Court can neither judge of your Objection, nor whether Law does arise till you have pleaded to the Fact; if it be not prov'd, no Law arises, and if it be prov'd to be done before the Act made, the Court will not regard it, but strike it off, and then you will not need Council.

Love. It can be no Prejudice to the Court to allow me one Day to advise with Council.

Ld President. We have shown you more Favour than perhaps became us; and nothing but Repetition of the same thing over and over again will satisfy you.

He desires then he may have Council to put his Plea into Form.

Love. You accepted a special Plea in Sir *John Stowel's* Case, and if my Ignorance does not permit me to put it into Form, why should I be refus'd the Aid of Council?

Ld President. Sir *John Stowel* insisted on special Matter he had to plead; so did Duke *Hamilton* and others; if there be any thing dubious in the Plea, the Court assigns Council, but not for Trifles, and we do no otherwise by you.

Mr. Att. Gen. My Lord, since Arguments won't prevail, I desire you'll give Judgment as the Law directs.

Love. I may demur to the Charge, yet not refuse to plead.

If the Prisoner demurs, he confesses the Fact.

Ld President. By doing that you confess the Charge. Clerk, read the Act.

[The Clerk reads part of the Act about refusing to plead.]

Love. My Lord, I desire but a Day's time to consult with Council.

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Ld President. The Court are of Opinion that you plead presently, or you shall have Judgment.

Love.

Love. I will plead, if you'll promise me Council to hear the Witnesses.

Ld President. We promise you Justice. Read the Sentence.

Love. Not Guilty.

Mr. Att. Gen. My Lord, in behalf of the Commonwealth, we do aver that he is guilty of the Treasons laid to his Charge; and when the Nature of the Evidence is open'd, I will produce Witnesses to make it good against him.

He pleads *Not Guilty.*

Mr. Attorney joyns issue with him.

Mr. Solicitor General open'd the Nature and Course of the Evidence; and *Mr. Attorney* afterwards observ'd the Heinousness of the Crime; that several of the Conspirators had fled for it, and others were so ingenuous as to confess; but that this Man, tho' a Minister of the Gospel, and a Seducer of others, persisted in denying it; notwithstanding he must know in his Conscience that the Fact would be prov'd upon him.

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Ld President. *Mr. Love*, you cannot but be sensible of your Privy to these Things which have been open'd, and you cannot do better than to confess them.

The Court exhort *Mr. Love* to make a free Confession.

Love. I protest, in the Presence of God and this Assembly, that I never wrote any Letter to, or receiv'd any Letter from, or collected or gave any Money, to be sent to the King of *Scotland*, or Queen his Mother, or the State or Church of *Scotland* in general, or to any particular Person of the *Scotish* Nation, since the Wars began; nor ever saw *Titus*, or receiv'd any thing from him.

Page 653.
He solemnly professes his Innocence.

Mr. Att. Gen. My Lord, we shall produce our Witnesses; call Captain *Potter*.

Love. I except against him, he hath made a Confession which is equal to a Conviction, and I hope the Court won't admit him.

He excepts to the Testimony of a Witness who had confess'd himself *Guilty* But is overrul'd.

Mr. Att. Gen. I have more Reason than *Mr. Love* to object against him, because he has been a Party, but I desire he may be admitted.

Captain *Potter* sworn.

Love. Let him be ask'd if he was not threaten'd with Death unless he would testify against me.

Ld President. Your over Importunity shall not prevail with us. Relate what you know of this Treason,

son, that hath been carried these two Years by the Presbyterian Party.

Potter's Evidence of the Presbyterians treating with the King.

Page 654.

Capt. Potter. In my former Examination I related several Things by Hearsay, and on Belief, but desire now I am sworn, that I may be ask'd nothing but what relates to my own Knowledge.

Mr. Att. Gen. Speak what you know of sending to and from *Scotland*, and from whom you know it.

Capt. Potter. I was not privy to the first Transaction, I said *Drake* told it me; but I am not positive, and may err; therefore I desire to answer only what I can affirm upon Oath.

Mr. Att. Gen. What do you know of *Mason's* coming, and the Answer that was return'd him?

Capt. Potter. I can say nothing of my own Knowledge, but was told that *Mason* came from my Lord *Piercy* to sound the Tempers of the People, and found it more adviseable that the King should join with the *Scots* than with the *Cavaliers*.

Mr. Att. Gen. You were invited to the Meetings; who was there, and what Discourse had you?

Capt. Potter. I think *William Drake*, Captain *Alford*, *Mason* and *Titus* were there; but I cannot be certain, and we had only common Discourse.

Ld President. Were not you mov'd to go to *Jersey*? and did not *Titus* offer to go?

Capt. Potter. I was not, but have heard *Titus* was to go.

Mr. Att. Gen. Let him declare if he was not present in *Mr. Love's* Study when a Letter came from *Titus*, what were the Contents of it, and who was there; and what Debates were had on it.

Capt. Potter. I have either seen or heard of a Letter from *Titus* (I know not which) for some one to come to *Calais* about the Treaty; and remember Major *Alford* told me he went over to him; but I cannot say it was either in *Mr. Love's* Study or in his House, or whether he was present, but believe he was not.

Potter's Examination read.

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[*Mr. Attorney* produces his Examination, and the Clerk reads to him.]

Capt. Potter. I verily believe the Substance of that Examination to be true upon my Conscience, but cannot swear to my Knowledge of it.

Mr.

Mr. *Att. Gen.* How many Days were betwixt *Alford's* going to and return from *Calais*? and where did he return the Answer he brought from *Titus*?

Capt. *Potter.* I think 'twas about a Week, and believe he made a Relation at Mr. *Love's*, and in his Presence, but am not sure whether 'twas there or any where else.

[His Examination was read again.]

Mr. *Att. Gen.* What was the Substance of the King's Letter?

Capt. *Potter.* I scarce remember there was a Letter, but have heard there was; and the Examination you shew me was not of my framing.

Mr. *Att. Gen.* My Lord, he perus'd other Men's Informations, and by them added and amended his own; and, when corrected, brought these very Things written with his own Hand.

Capt. *Potter.* I acknowledge the Hand, and believe it to be true, as I have heard.

Mr. *Att. Gen.* On the Oath you have taken, is it not true of your own Knowledge?

Capt. *Potter.* I can't say I saw the King's Letter, or heard it read, or whether *Alford* told me, tho' I think he did.

Love. Is it fair for Mr. *Attorney* to help the Witness?

Mr. *Att. Gen.* I may, by asking Questions; was there not a Meeting after *Alford's* Return, and Instructions given for a Commission to *Breda*? and did not Mr. *Love* correct them?

Capt. *Potter.* I never saw any Commission or Instructions, but have heard there were both directed to my Lord *Willoughby* of *Parham*, Colonel *Graves*, Major-General *Massej*, Captain *Titus* and Alderman *Bunce*, and think *William Drake* told me, but am not positive.

Mr. *Att. Gen.* Did not Mr. *Love* tell you? and were you not then at his House?

Capt. *Potter.* I don't remember I was there, and am sure he never told me so.

Mr. *Att. Gen.* Were not you at Mr. *Love's* House, and with whom, when Letters were agreed to be sent to *Massej*, *Bailey*, and *Titus*?

Capt.

Capt. Potter. I have been several Times at Mr. Love's with Mr. Jackson, Mr. Robinson, Major Alford, Mr. Drake, and Mr. Gibbons, on a Friendly or a Christian Account, and sometimes to hear and tell News; and have heard of such Letters; but really I have a bad Memory, I cannot say more to it.

Ld President. Between whom was the Correspondence held? and what Money was collected?

Capt. Potter. Between Titus there and Drake here; but I know of no Money, I never contributed a Penny.

Mr. Att. Gen. What not 10*l*. upon an Occasion, and brought it into Mr. Love's Parlour?

Capt. Potter. I own that, and that William Drake was writing Letters in his Table-Book, which he said were writ in Sack, that they might not be discover'd; and that one was for Titus, and the other for Bailey in Scotland; and after Drake absconded, we met often at Mr. Love's, and several Letters have been read, but from whom or to whom I know not, nor did Mr. Love ever give me any Reason for those Meetings, or ask me to contribute Money.

Mr. Att. Gen. Were there not private Fastis for a Blessing on the Treaty at Breda?

Capt. Potter. There were Fastis for averting the Sins of and Judgments on the Nation, where Mr. Love had preach'd and pray'd, but they were for no other Occasion.

Mr. Att. Gen. What Letters were read at Mr. Love's House after the Fight at Dunbar?

Capt. Potter. I have heard from Alford or Adams, that there were Letters from Bailey, Titus and Massey; and that the Messenger who brought them had five Pounds, of which I gave ten Shillings; but can't say 'twas at Mr. Love's, or that he gave any Money. I have also heard of Letters from the State and Church of Scotland, for Money and Arms; and that Arms were promis'd, but know not by whom; or who writ the Letter, or to whom they were directed, nor can I remember who told me so.

Mr. Att. Gen. Was there not a Letter with L up on it?

Capt.

Capt. Potter. I receiv'd that Letter, and thinking by the Letter *L*, that it belong'd to Mr. Love, I carried it thither, where 'twas open'd (I can't say by whom) and in it was a Narrative of two Sheets of the Affairs of Scotland since *Dunbar* Fight; and an anonymous Letter, as we suppos'd, from the Lords of *Argyle*, *Lowden*, and *Lothian*, and Mr. *Bailey*, who writ for 10000 *l.* to buy Arms and hire Ships, which (Mr. *Jaquel* and *Drake* being there) we refus'd, but agreed to raise Money for *Bamfield* (who sent it) and the Messenger that brought them; and I fetch'd 10 *l.* and laid down in Mr. Love's Parlour.

Mr. Att. Gen. Did not you then give Mr. Love a twitch by the Hand?

Capt. Potter. I can't say I did, or that Mr. Love gave any thing.

[His Examination was read again.]

Ld President. Is this Examination true of your own Knowledge?

Capt. Potter. The Substance is true, that I left the Money, but I can't say Mr. Love drew up, or receiv'd any Letter from *Titus* or *Bailey*; neither do I think that Part of the Examination is of my writing.

Mr. Att. Gen. Do you know of any Correspondence settled by way of *Kendal*?

Capt. Potter. I have heard so, but can't tell by whom; I knew *Groves* went thither for Letters, and I paid him 10 Pounds for going, 20 Shillings of which I receiv'd again of *Gibbons*, *Far*, and *Alford*, but I never had any Money from Mr. Love; neither can I tell whether he knew of *Groves's* going.

Mr. Att. Gen. Was there any Answer return'd to *Bamfield's* Letter?

Capt. Potter. A Letter directed to *Bamfield* was left in my Shop, I know not by whom, but suppose it came from Mr. Love or Dr. *Drake*, because I think 'twas agreed that they should draw up the Answer, and I sent the Letter.

Mr. Att. Gen. What Discourse pass'd betwixt Mr. Love and you, when you sent for him since you were in Prison?

Capt.

Capt. Potter. I acquainted him with my Examination, as to Cook's Business; and he exhorted me to Christian Patience, and to bear my Afflictions with Prudence and Fortitude; and said Titus's Man had convey'd some Letters from his Master, but he thought they did not concern me; and told me he had been at a Fast where I was remember'd.

Mr. Att. Gen. What hath Mrs. Love said to you?

Capt. Potter. She beg'd me not to discover any thing to prejudice her Husband.

Mr. Att. Gen. After I had taken his Examination in the Tower, he affirm'd the Truth of it before the Committee to his own Knowledge; and as this Man is brought upon his Life on his Information, it's an Abuse to the State, as well as to the Court, and Mr. Love and he ought to be punish'd, for accusing a Man before Authority and denying it on Oath.

Capt. Potter. Some things I have heard and believe, and some I know, and think it's all true, but there's difference betwixt my Belief and being positive upon Oath.

Potter withdraws, and Major Alford is call'd and sworn.

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Major Alford's
Evidence of the
Plot.

Mr. Att. Gen. Give an Account of all you know relating to this Affair.

Alford. I went with William Drake to the Swan at Dowgate to meet Captain Titus, who told us, that (if the Prince was assur'd of a considerable Party in England, that would strictly adhere to the Ends of the Covenant) the Prince himself was inclineable to take it; and we that were there (I have forgot the Persons) believing ourselves oblig'd to further it, Captain Titus propos'd another Meeting, and said that he would draw up a Petition to that Purpose. Accordingly we met at the Bear in Bread-street, where Titus read the Paper he had drawn, which was to desire the Prince to relinquish the Cavaliers, and to take and prosecute the Ends of the Covenant, which we afterwards agreed should be sent to the Prince, and Titus engag'd to do it; and that my Lord Piercy should satisfy the Prince that it came from the Presbyterian Party, and that the Ministers were engag'd in it: Titus afterwards, having learn'd from my Lord Piercy that 'twas necessary he should be there

The Presbyterians insist on the King's discharging the Cavaliers and taking the Covenant before they would join with him.

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there himself before the *Scotch* Commissioners went over, set forward, and had 30 Pounds of *William Drake* to bear his Expences; but having notice that his Agency was discover'd, he writ to *Drake*, that some Person might be sent over to *Calais*, to take an Account from him of what had been transacted; and by *Drake's* Persuasions I went to *Calais*, where he told me of the Hardships he had suffer'd at *Jersey* from the Cavaliers, and of his Imprisonment, and being threaten'd to be try'd for a Spy, till by the Arrival of the Lord *Liberton* the *Scotch* Commissioner, he got Access to and Favour with the Prince, but said that the Prince's Adherents were averse to the Covenant; and this Account *Titus* gave in Writing, directed to *Drake*, and I deliver'd it to him, who afterwards carried it to and read it at Mr. Love's House, where were present Mr. Love, Dr. *Drake*, Mr. *Cafe*, Major *Adams*, Mr. *Gibbons*, and Captain *Fay*.

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After this we agreed to send over a Commission for my Lord *Willoughby* of *Parham*, *Massey*, *Graves*, and *Titus*, to consult the *Scotch* Commissioners at *Breda*, and act there for the Presbyterian Party of *England*. *Drake* afterwards read a Letter to me, which he said he design'd for the Queen, to persuade the Prince to close with the *Scots*; and told me he held a Correspondence with *Bailey* in *Scotland*, and that the Business had been expensive, and desir'd me to let him have 10 Pounds (which I think I did) and he said, if he could raise a Sum amongst his other Acquaintance I should have Part return'd.

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The Presbyterians depute Commissioners to treat with the King and the *Scotch* Commissioners at *Breda*.

After *Dunbar* Fight, several of us being at Mr. Love's, a Letter was read which (as was said) came from *Massey*, and related the Action, and desir'd Arms might be sent (by way of *Holland*) and Money to supply the Necessities of him and *Titus*; there was no Agreement as to Arms, but that each should, by himself and Friends, raise what Money he could.

Mr. *Att. Gen.* Did not you bring a Copy of a Letter from the King?

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Alford. *Titus* shew'd me a Letter, which he said was from the King, and sent a Copy of it, which I

gave to *Drake*, and the same (I believe) was read at *Mr. Love's*, the Substance was, that he took the Petition kindly, and when he was in a Condition, should think of it.

Mr. Att. Gen. Did not you make a Narrative by word of Mouth at *Mr. Love's*?

Alford. Perhaps I might to the same Purpose I have told you.

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Mr. Att. Gen. Was the Commission to the Lord *Willoughby*, &c. read in *Mr. Love's* Study?

Alford. It was read there, and *Mr. Love* was present; but I can't say *Mr. Love* either was concern'd in the Direction or Correction of those Instructions.

Mr. Att. Gen. To what Purpose were the Instructions that were sent with the Commission?

Alford. They were of the same Substance with that I mention'd in the Petition.

Mr. Att. Gen. Who went with *Mason* when he carried those Papers?

Alford. None but myself; and two or three Days after *Mr. Gibbons* brought them from *Drake* at *Gravefend*, and deliver'd 'em to *Mason*.

Page 662.

Mr. Att. Gen. What Sum was propos'd to be rais'd to relieve the Necessities of *Titus*, &c?

Alford. *Mr. Love* mov'd us to contribute towards it; at first 500 Pounds were mention'd, but that being too much for Men in our Circumstances to raise, 'twas lower'd to 2 or 300 Pounds; I promis'd 10 Pounds, and my Man paid it; and I heard 30 Pounds were sent to *Titus*.

Mr. Love. Did I send you to *Titus*? or was I present at the reading the Letter you brought from him?

Alford. I never was at your House, or ever saw you till after my Return from *Calais*; but the Letter was read in your Study, whether you were at the reading I know not.

Love. How long ago was this Letter? and was it sent to me?

Alford. 'Twas about two Years ago; the Letter was sent to *Drake*, and two or three Days after he receiv'd it he brought the Papers to your House.

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Major *Alford* withdraws, and Major *Huntington* Page 661.
sworn.

Ld *President*. What do you know concerning Mr. *Love*, the Commission, and Captain *Titus*?

Major *Huntington*. About March 1648, I met Cap- Major Huntington's Evidence.
tain *Titus* at the *Swan Tavern* at *Dowgate*, where
were Colonel *Barton*, Colonel *Vaughan*, Captain
Massej, and Lieutenant-Colonel *Bains*; *Titus* very
much extoll'd the Prince, but said, notwithstanding
his Qualifications, he was like to be drawn into ill
Courses by the Malignant Party, and join with the
Irish Rebels, unless they, and some Persons of Ho-
nour he would get, could persuade him, by Letter,
into a good Opinion of the *Scots*, and to take the
Covenant. About a Fortnight after I met them
again at the *White-Hart* in *Bread-street*, where *Titus*
declar'd he had Letters from Persons of Honour to
my Lord *Piercy*, and hop'd they would join in the
Design; and read a Paper, importing, that if the
King would join with the *Scots*, they were bound in
Conscience and Honour to help him to and main-
tain him in his Right; but Colonel *Bains* saying
'twas a malignant Business, and he would not be
concern'd in it, the Meeting broke up, and they
were fearful Colonel *Bains* would betray them.
Major *Alford* told me afterwards, the Letter was
sent in the Names of the secluded Members, Mi-
nisters, Citizens, Soldierly and Noblemen; and that
the Prince storm'd when he saw it, and said, *Who*
are these Noblemen? can they raise me 10000 Men?
whereupon there was nothing done; and *Titus* re-
tir'd to his Mother's House, and there liv'd about
three Quarters of a Year, when he came to Town
to solicit his own Business.

A little after this (upon the Business of the *Scots*)
Alford and *Drake* told me another Letter was sent,
and *Titus* with a Sum of Money after it; I went to
Mr. *Love's*, where *Drake* read a Paper, importing a
Commission to my Lord *Willoughby*, &c. in behalf
of the well-affected Party in *England* to join with
the *Scotch* Commissioners, in order to a Treaty, ac-
cording to Instructions therewith inclos'd. And
Drake said, *We have the King's Command and a prudent*
Parliament's Man's Authority (whom I esteem beyond the
present

Page 664.
Evidence of
Love's Consent
to depute Com-
missioners as
usual.

(present Power) to empower us to give such Commission.
And Mr. Love said, *Well, well, let it go.*

Lieutenant-Colonel Bains sworn.

Ld President. Declare your Knowledge in this Affair.

L Col. Bains's
Evidence.

Bains. My Lord, I was at two Meetings at Dowgate; at the first there were Nine or Ten of us, and a Gentleman, who I was afterwards told was Colonel Titus, propos'd to address the King (as he call'd him) by way of Petition, as the only way to preserve the Presbyterian Interest in England, for that that would assure him he had a considerable Party here, and said 'twas a Duty incumbent on us by our Covenant.

At the second Meeting, he produc'd a Paper, and before he read it, began to praise the King; and 'twas debated whether it should be sign'd or not; but two others and myself dislik'd it, and I never heard more of it; I can't remember the Heads of the Petition, but the Substance is in this Paper, and this I deliver upon Oath, but can say nothing as to the Gentleman at the Bar.

Major Adams sworn.

Mr. Att. Gen. What do you know of Mason, and of Letters sent by him?

Major Adams's
Evidence.

Adams. Mason communicated Letters to Mr. Drake, Alford, Potter, Far, and myself, which he said came from my Lord Piercy; and Answers were sent back, but I know not by whom.

Ld President. What do you know of the Meeting at the Swan at Dowgate?

Adams. I was at a Meeting, with Mr. Drake, Titus, Alford, Far, and Potter, but have forgot where or when; and 'twas agreed at that Meeting, that Titus should go to Jersey, to endeavour an Agreement, according to the Covenant between the King and the Scots; and they promis'd to furnish Titus with about 100 Pounds to defray the Charges of his Journey, of which I paid 20 Pounds; but I cannot say Mr. Love knew any thing of it.

Mr. Att. Gen. What Answer did Titus return?

Adams. He sent Word that the Council had Knowledge of his being there, and desir'd some one might be sent to Calais, to whom he would communicate

nicate what he dar'd not trust to Writing; and 'twas propos'd in Mr. Love's Chamber for me to go; but *Alford* went and return'd with a Narrative, and a Copy of a Letter from the King. In that Letter the King expressed much Affection to the Ministry, promis'd them his Favour when he should be in a Condition, and desir'd them to continue stedfast; and the Narrative gave an Account of *Titus's* ill Usage at *Jersey*, &c. These were read in Mr. Love's Study, but I can't say he was present. There was a Motion likewise made to return *Titus* Thanks for his Management, and to send him more Money, to which I paid 10*l.* to Mr. *Drake* at his Father's Shop. 'Twas also there propos'd, that a Commission, and Instructions, should be sent over, and a rough Draught of the Commission was afterwards brought to Mr. Love's Study by Mr. *Gibbons*, and was there read by Mr. *Drake*, and was to this Effect; "That We the Presbyterians of *England*, did authorize the Lord *Willoughby* of *Parham*, *Edward Massiey*, &c. to assist our Brethren the *Scotch* Commissioners in their Treaty with the King, according to the Instructions annex'd." The Substance of the Instructions was to move the King to satisfy the *Scots*, and take the Covenant; and 'twas debated, whether we should act in the Name of the Secluded Members, or of some others. I think Mr. Love was present at this Meeting part of the time, but I know not the particular time.

Mr. *Att. Gen.* Was there not a Letter from *Piercy* that a Sum of Money ought to be sent to the King?

Adams. There was; and *Mason* shew'd me the Answer, that Money should be rais'd when the King had agreed with the *Scots*; and I heard of a Letter from *Massiey*, complaining he had Enemies in *Scotland*, and could not be prefer'd there.

Mr. *Att. Gen.* What do you know of *Serks* the *Scotch* Agent?

Adams. He was sometimes at our Meetings at Mr. Love's, and we all apprehended him to be the *Scotch* Agent; and when 'twas enacted that the *Scotch* should be banish'd, there was a Collection for his

The *TRIAL* of

his Charges, to which I contributed ten or twelve Shillings.

Ld President. Was not Money propounded to be rais'd for *Massej* and *Titus* in Mr. *Love's* Study?

Adams. I rather think 'twas in his lower Room; but he was present.

Mr. Att. Gen. Was not a Letter writ by Mr. *Love*, and Dr. *Drake*?

Adams. I thought it of their penning by the Language, only 'twas directed to the General Assembly and Kirk of Scotland. It was to promote the Ends of the Covenant, and took Notice of *Massej*, and the *Englisb* not being respected by them, and of the *Scots* being beaten; but said, that they could not promise any considerable Sums of Money.

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Mr. Att. Gen. This was after we were engaged in Blood, after *Dunbar* Fight. What do you know of a Correspondency settled by way of *Kendal*?

Adams. I believe such a thing was, but don't know it.

Mr. Att. Gen. What did Mr. *Love* tell you if the Presbyterians got the upper Hand?

Adams. I think he said, if the Presbyterians were in Arms, the Cavaliering Party might be hinder'd from bearing the Sway.

Love. My Lord, I desire he may be ask'd, if I ever writ or receiv'd any of these supposed Letters.

Adams. I cannot say you did.

Love. Did I consent to the sending the Commission and Instructions, as they are call'd?

Adams. I will not swear it.

Ld President. Will you not? Was not he privy to them? Did he declare any Dissent?

Adams. I cannot say he did.

Love. He never read any of these Letters mention'd, only heard them read.

Ld President. Where there is such a Correspondency, and a confiding Man reads them, it is a Hear-say that ought to be taken Notice of.

Love. Let him prove a Correspondency on my part.

Ld President. They met, receiv'd Instructions, and debated together, therefore he was a Correspondent.

Love.

Love. Was not you threatned with Death if you would not, and offer'd Favour if you would be Evidence against me? I can prove you confess'd it.

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The Witness threatned to be hang'd if he would not be ingenuous in his Examination.

Adams. I told *Percival*, if I was not ingenuous on my Examination, I was threaten'd to be hang'd.

Love. Have not you receiv'd Money to testify against me?

Adams. Upon my Oath I have not.

Love. I desire Major *Cobbet* may be call'd [who was sworn]. Pray have not you within three Months given Major *Adams* Money to inform Mr. *Scot*, or the Council of State, of this Business?

Cobbet. I have long known Major *Adams*, and commiserating him as a Prisoner, lent him 10*l.* but not to betray you or any Man; I paid it to his Wife.

Major *Cobbet's* Evidence.

Love. You paid it to her to cover the Bribery: Did not you offer him Preferment if he would discover what he knew? And say Mr. *Scot* should gratify him if he would reveal it?

Cobbet. Being persuaded there was Matter of dangerous Import to the Commonwealth, I thought it my Duty to gratify those who would take Pains to discover it; and advis'd Major *Adams* to reveal what he knew; and told him if he would ingenuously confess, I would serve him to the utmost of my Power.

Promises made to a Witness if he would discover.

Love. You have carried him to Mr. *Scot*, and promis'd him Preferment.

[Then the Court adjourn'd till the Morrow, and the Prisoner was remanded to the Tower.]

The second Day's Proceedings, July 21. 1651.

Mr. *Jaquel* was call'd, and the Oath being tender'd him, he would have excus'd himself from taking it, saying, that he was accus'd of the same Crimes, and so was not a good Witness; and that he could not in Conscience swear against Mr. *Love*; and said, that he would declare what he knew as faithfully as if he was sworn, and persisted some time in his Refusal: But on the Court's threatening to fine him 500*l.* he consented to be sworn,

Jaquel is sworn, laying his Hands on his Buttons instead of the Book.

provided he might lay his Hand only on his Buttons, instead of the Book ; which the Court consented to, upon his professing he thought himself under an Oath.

Ld President. Give Account of what you know of this Matter.

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Jaquel. I went with *William Drake* to a Cheesemonger's House in *Newgate Market*, and there saw *Titus*, who said he lately came from *Holland*, and gave great Commendations of the King ; but said, the People about him, especially the Ministers, were very wicked ; and I saw him no more afterwards.

Mr. Att. Gen. What do you know of Money propos'd for *Titus*, and of *Alford's* being sent for to *Calais* ?

Jaquel. When *Alford* return'd, I went with *William Drake* to *Mr. Love's* House, where were *Alford*, *Potter*, *Watson*, *Mr. Love*, and several others ; where a Narrative was read, importing, that *Titus* had been at *Fersey*, and found the King inclinable to agree with the *Scots* Commissioners, but that the People about him prevented it ; and 'twas there mov'd by *Captain Potter*, that 40*l.* might be rais'd for *Titus*, but 'twas not agreed on.

Mr. Att. Gen. Was *Mr. Love* present at the Reading ?

Jaquel. He was sometimes present, I can't say at the Reading, he being often call'd out.

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Mr. Att. Gen. What say you to *Sterks* the *Scotch* Agent ?

Jaquel. I only know he was a *Scotchman* ; and that four or five Pounds were collected for him, of which I contributed ten Shillings ?

Mr. Att. Gen. What Fasts was you at, and what was the Occasion of them ?

Jaquel. I was at *Major Adams's*, and *Col. Barton's*, where *Mr. Love* and *Mr. Jenkins* have officiated, and the Intent was to pray for the good of both Nations.

Mr. Att. Gen. Was it not for an Agreement between the King and the *Scots* ?

Jaquel. Since the Difference betwixt *England* and *Scotland*, I have been at twenty Fasts ; and as both Nations

Nations are the Church of God, I think it my Duty to pray for the Good of both.

Mr. Att. Gen. What do you know of Letters from *Bamfield*? And where were they read?

Jaquel. Captain *Potter* desir'd me to go with him to Mr. Love's, and said he had receiv'd Letters from *Bamfield*, which after Mr. *Drake* came in were read; but Mr. Love declar'd he never saw or heard of the Man before: The Letter mention'd that *Hamilton* and his Party were for the King; *Argyle* and *Lesley* for King and Kirk; and *Strangban* and *Car* for neither King nor Kirk: And there was something of the King's Escape, but it said he was fetch'd back again; and that they had now agreed to receive in the whole Nation, except those who were very scandalous and excommunicated; and that my Lord *Suffolk*, my Lord *Warwick*, and Lord *Manchester*, or one of them, were fittest to command in England.

The whole Scots Nation unite in the King's Cause.

Mr. Att. Gen. What Money was propos'd to be rais'd for *Bamfield*?

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Jaquel. Captain *Potter* motion'd 30*l.* for *Bamfield*, and 10*l.* for his Man; and said if we agreed to it, he would deposite 10*l.* to the Man, but no Agreement was made.

Mr. Att. Gen. When Mr. Love, *Drake*, and *Potter*, thought it fit, did not you all agree?

Jaquel. There was no Agreement, but all present thought it convenient.

Mr. Att. Gen. How much have you given in all, and for what Uses?

Jaquel. I paid *Drake* two 5*l.* for charitable Uses; but understood afterwards some was sent to *Titus*.

Love. I would ask him if he has given this as a meer Relation, or on his Oath.

Mr. Att. Gen. That is past, he has acknowledg'd he was under Oath.

Ld President. Some things he delivers by Relation from particular Persons, and some on his own Knowledge, and the Court accepts him as a Witness.

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Love. Was the Narrative you mention read at my House, or only related by *Alford*?

Jaquel. Truly I cannot tell that.

Love,

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Love. Was praying for the Good of both Nations mention'd at the Meeting?

(No Answer.)

Love. He says, I did not agree to the Sum of 40*l.* and says afterwards all present thought it convenient; how does he know I thought it convenient?

Jaquel. Mr. *Love* did not say 'twas convenient, but no one dissented from it.

Colonel *Barton* is call'd and sworn.

Col. Barton's
Evidence.

Mr. Att. Gen. My Lord, Let Colonel *Barton* give an Account of the Meeting at the *Swan* at *Dowgate*.

Barton. A little after the late King's Death, by Persuasion of *William Drake* I went thither, where were Major *Huntington*, Lieutenant-Colonel *Bains*, Major *Alford*, *Drake*, and *Titus*: I came in the middle of the Discourse, and having a Defect in my Hearing, could not judge of it; but *Drake* told me afterwards it was to make Application to the Prince, to discharge his evil Council, and rely upon honest Men. Two or three Days after I was with the same Company at the *White-Hart* in *Basinglane-End*, and a Paper had been read before I came; but *William Drake* told me the Meeting was to the same Intent as before; and that they design'd to send one over to the Prince. Some time after Colonel *Bains* acquainted me that they design'd to apply to my Lord *Piercy* and *Jermyn*, which he dislik'd; and I told *Drake* I did not think them fit Instruments; for he could not think they would advise the King to relinquish themselves, which made him afterwards more cautious of me, though he did get 10*l.* of me, on Pretence of a Friend of his being in Necessity; but I afterwards thought it was for Captain *Titus*. I know of no more Meetings, nor any thing of the Prisoner at the Bar.

Mr. Att. Gen. Did not you meet *Titus* in *Fleet-Street*?

Barton. I did, where he gave an Account of the late King's Parts and Virtues; which made me think him a Cavalier, and refrain the Company.

Mr. Att. Gen. On what Occasion were the private Fasts at your House? And who officiated?

Barton. At some Person's Request (I know not whose) they met at a Room in my House ; there were Sir *Matthew Brand*, Mr. *Vickers*, Mr. *Jenkins*, Mr. *Love*, Mr. *Tate*, Mr. *Jaquel*, Mr. *Cafe*, and Mr. *Robinson* : I was little there because of Customers ; but don't remember any thing but for pardoning the Sins of the Nation.

Mr. *Att. Gen.* Did you give any Money for *Massey*, or others beyond Sea ?

Barton. It was reported, that the Prisoners taken at *Dunbar*, and brought up the River, were in great Misery, and several desir'd me to contribute to them. Captain *Far* requested some Money of me, but did not say for what Use, neither did I ask ; for tho' I had laid by 50*l.* which, I confess, I did intend for the *Scotch* Prisoners, yet I was not willing to be thought charitable to your Enemies.

Mr. *Att. Gen.* Mr. *Jaquel*, were not Mr. *Drake* and Mr. *Love* intimately acquainted ?

Jaquel. Mr. *Drake* would be acquainted with all the Ministers in Town ; but I believe was no more so with Mr. *Love* than with any other.

Captain *Far* is sworn.

Mr. *Att. Gen.* Give an Account what pass'd at the *White-Hart* in *Bread-street*.

Captain *Far*'s Evidence.

Capt. *Far.* About two Years since, at the Request of *William Drake*, I went to the *White-Hart* in *Bread-street*, where it was discours'd of drawing up some Heads of a Letter to desire the *Scots* to moderate their Propositions, in order to an Agreement betwixt the King and them ; and *Drake* told me the Letters were sent, and said it was fit one should be at the Treaty at *Jersey* ; and that *Titus* offer'd to go ; and on *Drake*'s Request I left 10*l.* in his Warehouse to supply *Titus*'s Necessities.

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Ld *President.* Was you at Mr. *Love*'s when the Letter from *Titus* was read, desiring some Body to be sent to *Calais*, because he was discover'd to the Council of State ?

Capt. *Far.* I was at the Reading of that Letter in Mr. *Love*'s Study, and he was present : It was propos'd that I should go, but *Alford*'s Son being there, he went.

Mr. *Att.*

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Mr. *Att. Gen.* Where was the Account given at his Return ?

Capt. *Far.* At Mr. *Love's*, but I am not certain he was there ; a Copy of a Letter was read, to send Commissioners to the Treaty at *Breda* ; but it's so long since, I have forgot the rest.

Mr. *Att. Gen.* Was it not a Declaration to satisfy the *Scots*, and a Request to the *Presbyterians* ?

Love. It is very unjust for you to direct him what to say ; it has not been prov'd that I sent or receiv'd Letters, or lent Money by any of the eight Witnesses.

Ld *President.* How many were at this Meeting, and who ?

Far. About ten or twelve ; but I cannot recollect the Persons, *Drake* read the Papers to the Company, but the Proposal of sending Commissioners was rejected, because private Persons had no such Power. *Drake* undertook to draw the Instructions, which with the Commission to my Lord *Willoughby*, &c. were read, empowering them to advise, but not to treat in behalf of the *Presbyterian* Party, and a Letter to desire the Queen to persuade the King to satisfy the *Scots* in their just Demands.

Mr. *Att. Gen.* Did not you go afterwards to *Southwark* ?

Far. I went thither, and to *Gravesend* with *Alford* and his Son *Bunce*, where we met *Mason*, who I believe carried over the Instructions.

Mr. *Att. Gen.* Were you at the Fast at Colonel *Barton's* ? And who officiated there ?

Far. I believe Mr. *Love*, and Mr. *Robinson*, and one of them pray'd for a Blessing on the Treaty between the King and *Scots* ; but I cannot say it was Mr. *Love*.

Mr. *Att. Gen.* Was you at Mr. *Love's* when they met after *Dunbar* Fight ?

Far. I came there late, and was told of a Letter to assist the King with Money, Arms and Ammunition ; and Mr. *Love* said we could not do it, but told me it was agreed to raise 250 or 300 *l.* to relieve the Necessities of *Maffey* and *Tisus*, and I promis'd 5 *l.* and afterwards brought it in a Paper, as it was agreed, and laid it on Mr. *Love's* Table.

Mr. *Att.*

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Fasts kept by the *Presbyterians* for a Blessing on their Treaty.

Mr. Att. Gen. Did not you speak to Colonel Barton to lend Money?

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Capt. Far. I did; and receiv'd 10 *l.* in a Paper, to prevent Discovery, under Notion of a charitable Use, and gave it to *Masseys* Brother; and conceive it was for *Masseys* and *Titus*.

Love. Pray ask him if I was privy to the Negotiations with *Titus*.

Capt. Far. I can't say you were present when the Letter was read, because you often went out and in; but I believe you was privy to the Contents of it; and the Narrative was brought from *Titus*, whom *William Drake* sent over.

Love. Was this pretended Commission read at my House before the 29th of March 1650?

Capt. Far. 'Twas about two Years since, I know not the exact Time; 'twas a rude Draught only, and *Drake* undertook to draw it up; but I know not if *Mr. Love* was there when 'twas sent away.

Love. If my Witneses may be indemnified, I'll prove I declar'd against any Commission.

Love acknowledges he knew of the Commission, and debated concerning it.

Ld. President. *Mr. Love* hath declar'd then he knew of the Commission.

Love. I acknowledge the disavowing of any Commission; I desire to know if the Letter he says I told him was read at my House, was the real Letter, or a Copy only?

Capt. Far. I cannot tell that, or by whom or to whom 'twas written.

Love. Did I agree the 250 or 300 Pounds you speak of should be sent?

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Capt. Far. 'Twas agreed on, I cannot say by whom particularly; but no one disagreed; and you ask'd me what I would do; I suppose *Masseys* Brother had the Money I brought.

Love. That clears me; if one bring Money to my House without my Order, and another receive it, 'tis nothing to me.

Mr. Att. Gen. My Lord, we shall now produce Minister against Minister.

Mr. Jackson, a Minister, call'd.

Jackson. I dare not swear, for I should have no Peace in my Conscience to the Day of my Death, should I testify any thing but circumstantially prejudicial

Jackson, a Presbyterian Minister, refuses to swear against his Brother *Love*.

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judicial against the Life of this Man, whom I believe to be very precious in God's Sight.

Mr. *Att. Gen.* All the College of Jesuits have not more Shifts and Evasions than these Men have; that a Minister should think this Man, tho' a Traytor, more precious than the Commonwealth; I hope we shall root out these Opinions, or some of those that hold them.

Ld *President.* Mr. *Jackson*, St. *Austin* tells you, you ought not to conceal a Truth or tell a Lie.

Mr. *Att. Gen.* You are requir'd to speak the Truth, and nothing else; I desire the Clerk may give him his Oath.

Clerk tenders the Oath.

Ld *President.* Will you take this Oath or not?

Jackson. No, my Lord, I am a Man of a troubled Spirit, and dare not do it.

[The Court consults.]

Ld *President.* Mr. *Jackson*, the Court fines you 500 Pounds for your Refusal, and Imprisonment during the Court's Pleasure.

[He was order'd into Custody of the Keeper of the Fleet.]

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The Court set a Fine of 500 l. upon him, and commit him to Prison during Pleasure.

Mr. *Lowe* moves for Time and Council, and has till *Wednesday* to prepare for his Defence.

Lowe. My Lord, if I have inconsiderately utter'd any Expressions offensive to your Lordship, or the Court, I hope 'twill be imputed to my Ignorance in Law; the Charge against me is long, and I have neither perus'd that or the Depositions against me; I desire Council and Solicitors may be assign'd me, and a convenient Time to give in my Answer.

Ld *President.* You shall have all this Afternoon.

Mr. *Att. Gen.* My Lord, he has had a Fortnight's Notice; had he been try'd by a Jury it must have been ended in one Day; and if he makes not his Defence, now he must do it on *Monday*.

Lowe. I cannot read the Depositions by *Monday*, to Morrow should be otherwise employ'd.

Ld *President.* This is of greater Moment than all your Preaching and Praying; but the Court agree to give you till *Wednesday* Morning eight a Clock, and Council you have had.

Lowe. I have had none, my Lord, they refus'd to come to me, unless assign'd by the Court, as I have their Letters here to produce.

Mr.

The Court tell the Prisoner Council may come to him if they will, but make no Order in it.

Mr. *Att. Gen.* Council may come if they will, which is all we can say.

[The Prisoner is commanded away, and the Court adjourns.]

July 25, 1651. The Court being set, the Prisoner was commanded to the Bar.

Mr. *Att. Gen.* My Lord, I have nothing further, at present, to urge against the Gentleman at the Bar, and hope he is convinc'd that the Charge is sufficiently prov'd; if not, I am ready to proceed in whatsoever way he thinks fit.

Love. My Lord, tho' you've refus'd me Council, you have granted me that Favour the Romans gave to Paul, viz. to answer for myself. My Lord, there are many Things laid in this Charge, which are said to be done before the Commencement of the Act on which I am prosecuted. I am also charg'd with some Things which I knew not, and some which I did not; as raising Insurrections, Seditions and Rebellions: I declare I never did, or held Correspondence with the late King's Son, the Queen, *Jermin*, *Piercy*, and others, as I am charg'd to have done; or with any in the *Scotch* Nation; neither does any of the Witnesses swear it; or that I desir'd or directed any one to do it, but say that they have been read at my House, which I don't deny; nor does any of the seven Witnesses under Oath (or Mr. *Jaquel*, whom I don't think to be so) depose that I collected any Money for the King or *Scots*, or endeavour'd to raise Forces or Insurrections against the Government.

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Mr. Love enters upon his Defence.

Tho' many Particulars have been sworn against me, there has been but one Witness to each of the several respective Facts; and as they are not only accus'd of, but have confess'd Treason (according to your Act) 'tis equal to a Conviction; and so they are not *legales Testes*, which I must leave to your Consideration.

He objects that there has been but one Witness to any particular Fact.

There's none but *Far* swears that *Alford* was at my House desir'd to go to *Calais*, and that's undeniably false, for *Alford* himself swears he never was at my House till after his Return from thence; next *Far* swears, that the Substance of the Copy of the Letter from the King was to send over Commis-

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fioners to *Breda*, when no such Thing was therein, or acknowledg'd to be so by any other Witness.

There is only *Alford* swears to the Agreement of sending the Commission. *Adams*, indeed, said 'twas propos'd; and *Huntington* swore I said *let it go*; but *Far* depos'd the whole Company dissented. I will not deny (now Witnesses have prov'd it) but that I was present; but I express'd myself against the Commission and Instructions, as a high Act of Presumption in private Persons to pretend to send Commissions; yet I'll suppose this had been true, as likewise the Business of *Titus* (which is not) 'tis said to be done in 1649, so before your Act of the 26th of *March* 1650, and therefore I hope no Crime.

As to what is depos'd of my moving for Contribution of Money (if true) I suppose it does not come within the Act of the second of *August* 1650, viz. That the sending or causing to be sent Money, Horses, or Arms into *Scotland*, shall be adjudg'd Treason: Now, Sir, 'tis not prov'd I receiv'd or sent any, so that the moving it only does not bring me under your Act, as to Treason.

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I observe likewise there's none but *Adams* swears to the Letter, which he says was declar'd to be directed to the General-Assembly of *Scotland*, and that only by Hearsay; and he says he believ'd it pen'd by me or *Dr. Drake*; and gives no other Reason than because of the Language; and says it was to promote the Ends of the Covenant; and as he never saw any Letter of mine, I hope the Court will not think this Evidence sufficient, neither does he swear to the Words, but to the Substance of the Letter, and a small Variation may wholly alter the Sense; as *John* 2. 19. where our Saviour said, *Destroy ye this Temple, and in three Days I will raise it up*, he was accus'd for saying, *I will destroy this Temple*, *Mark* 24. 58. now the Alteration of the Word *ye* for *will*, and the Addition of the Letter *I*, alter the Sense, and the Scripture takes notice that his Accusers gave false Testimony; and in Matters of Treason *Probationes oportent esse Luce clariores*; notwithstanding this, if it be true, I hope your Lordship will consider 'tis but a single Evidence. As to his

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his testifying, that I should say, if the Presbyterians were in Arms the Malignants might be prevented from getting the Day, I can't see (if the Words be not wrested) what Crime can be in 'em, so shall leave them as they are.

My Lord, I shall beg leave to make some brief Observations on the Depositions, in order as they were taken; and tho' I shall pass over those Things that touch me not, yet (as I am on my Life) I must not omit that which concerns me.

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Some particular
Observations of
the Prisoner's on
the Evidence.

The first Witness is *Potter*, who swears he brought 10 Pounds and laid it down on my Table; but as he does not affirm that I saw him do it, or receiv'd it, or order'd him to bring it, I hope the Court will not impute any Crime to me concerning it. Mr. *Attorney* was pleas'd to ask him if he did not give me a twitch by the Hand when he brought it; if he had done so (which he denies) I hope you would not take that silent Motion as Evidence.

He likewise being ask'd, what Answer was return'd to the Letters of *Barnfield*, &c. depos'd, a Letter was left at his Shop, which he thought came from me or Dr. *Drake*; but how could he either know from whom it came, or the Contents of it, when he never open'd the Letter? I must observe also, that he confesses, till he was shew'd other Men's Examinations, and was prompted and remember'd by Mr. *Attorney*, there were several Things he had forgot; and I desire you'll consider if this be a clear and legal Testimony.

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The next Witness, *Alford*, deposes, at reading the Letter (after *Dunbar* Fight) from *Massej*, in which he writ for Money and Arms, that I mov'd for a Contribution of Money; and Mr. *Attorney* was pleas'd to intimate as if that Money was to buy Arms, when *Alford* himself declares 'twas to supply the Necessities of *Massej* and *Titus*. Now I desire those Insinuations and Aggravations of Mr. *Attorney* may not be laid upon me; and as a Motion to raise Money, is not sending Money, or if sent, 'tis not prov'd those People were at that Time in Arms, so not within Compass of the Act; or if it should be so construed, 'tis prov'd only by his single Evidence.

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Mr. *Huntington*, the third Witness, affirms, when he came to my House Prayers were done; now as he could speak so positively to that, when he could not be certain there had been any, I think may very well make his whole Testimony questionable; and for his deposing I said (speaking of the Papers to be sent) *let it go*, I am not so ill a Grammarian, but should have said *let them go*; so that either I must be guilty of Nonsense, or he of Falshood.

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The next is Mr. *Adams*, who deposes, that one *Sterk* us'd to come to my House, and we took him to be a *Scotch Agent*. This is only Supposal, he does not swear positively, and I depose upon Oath, that I had it from himself and others, that he was no Agent; and Mr. *Blare* (when in *London*) affirm'd to me that *Sterk* was a poor honest Man, and not employ'd as an Instrument of State; neither is his Testimony against me, more than Conceivings and Suppositions; and I desire I may not be censur'd for that.

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Jaquel, the next Witness I can't say, but Informer, for when the Oath was tender'd, he only put his Hand on his Buttons; and when question'd, only said I am as good as under an Oath; but afterwards fearing the Fine, he (tho' with regret of Conscience) acknowledg'd it; but I am this Day inform'd that he denies he was under Oath, so shall say nothing to his Testimony, but look upon it as a bare Relation.

The last, who testified any thing against me, is Captain *Far*, who (considering what he spoke by the prompting, I may call it, of Mr. *Attorney*, and the reading from his private Examinations) can scarce be thought a Witness, who is to spoke *vice voce*; for he says 'twas so long ago he does not remember; and indeed (but for Mr. *Attorney's* remembring for him) could have given no Testimony; and I think the most of his Evidence has been already answer'd, unless his bringing five Pounds and laying it down in my House, which I never saw; but at last he clears me, and says *Masseys* Brother receiv'd it.

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My Lord, having gone through the Depositions, I shall only add my Unwillingness to confess any

†

thing,

thing, before I saw the Witnesses Face to Face; for should my Confession amount to Treason in your Law, you might have hang'd me, and so I had been guilty of my own Death: But now I do confess there were several Meetings at my House, and that I was present at the reading of Letters, as also of this Commission, but I dislik'd it, and dissented from it; nor did I know the Danger of it. The Act of the second of *August* 1650 makes it Treason to hold any Correspondence with *Scotland*, tho' but by Letters of Commerce: And my Council acquaints me, the being present when those Letters were read, makes me guilty of a Concealment, for which I submit myself to your Mercy.

Love acknowledges the Meetings at his House, the reading the Letters and Commissions, and his debating Matters concerning them; but says he disapprov'd the Design; and so is guilty only of a Misdemeanor.

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And that I may not be thought otherwise than I really am, I do solemnly protest I am no Malignant, never had a malignant Design, or carried on a malignant Interest: I engag'd many in the Parliament's Quarrel against the King; and tho' I gave but little, yet I gave all I had in the World (Books and Cloaths excepted.) When I was a Master of Arts of *Oxon*, I was the first that refus'd signing the Canons concerning the Prelates and Common Prayer, for which I was expell'd the Congregation-House. About 1640, or 41, I was imprison'd at *Newcastle* for speaking against the Errors of the Service-Book; and was the first Minister, after the Wars began between the King and Parliament, that was apprehended for Preaching Treason, and was afterwards complain'd of by the King's Commissioners, for a Sermon I preach'd at *Uxbridge*; and now this great Trouble is fallen on me, 'tis not the Fear of Death concerns me; but that I should receive it from those Hands for whom I have done and suffer'd so much, with whom I have been engag'd in the same Quarrel, and join'd in the same Covenant, this exceedingly touches me.

He shows how zealous he was in the Cause of the Parliament against the King. Says he was one of the first at *Oxford* that refus'd Conformity, for which he was expell'd, &c. That he was the first that was apprehended for preaching Treason against the King.

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And laments his suffering by their Hands for whom he had done so much.

I humbly beg the Favour of your Lordship and the Court (as you were pleas'd to promise me the first Day) that you will be of Council for me, for you are Judges both of Law and Fact, and I desire you will put the most favourable Construction on what I've done, and what the Witnesses have depos'd; I acknowledge my Desire that the King

The TRYAL of

and Scots should agree, because I believ'd it much better for our Religion, and for the good of the Nation, than that he should join with the *Irish* Rebels, or give up his Interest to the *Turks* or *Spaniards*; and as a Clause in the Covenant is to seek the Union and Good of both Nations; and as the Scots had declar'd him their King, I believ'd it consonant to the Covenant, to desire an Agreement betwixt them; and according to your Lordship's Expression at *Guild-Hall*, *Non est reus, nisi Mens sit rea*.

Page 692.

I desire your Lordship will not hearken to any politick Suggestions, as that it will not be for the Honour and Interest of the State to save me; it was suggested to *Pilate*, *If thou sparest that Man thou art no Friend to Cæsar*. And so it may have been insinuated to you, that you are not Friends to them from whom you derive your Authority, if you do not condemn me: But be Friends to yourselves and Families, and take heed that you bring not guiltless Blood upon you: I do acknowledge, that as to the concealing and not revealing these Things, I am obnoxious to your Acts; and for this *Misprision* I humbly beg your Mercy. And if my Crime should be thought to deserve Death, yet if you condemn me rather upon a political Interest, than the Merit of Fact, the Scripture accounts not that Justice, but Murder; and let there be some little Regard had to my Function, and to what I have done and suffer'd: Let it be remember'd what *Solomon* said in a like Case to *Abiathar* the Priest, viz. *Thou art worthy of Death, but I will not at this time put thee to Death, because thou bearest the Ark of the Lord God before David my Father; and because thou hast been afflicted in all wherein my Father was afflicted*. Many Things may be said to exasperate you, and to induce you to pass a doleful Sentence upon me, which I hope you cannot, and for the Fear of the Lord you dare not pronounce; but if it fall out otherwise, I will say to you as *Jeremiah* did to the Rulers of *Israel*, *Ye shall surely bring Innocent Blood upon yourselves*; and so I commit myself to God and your Consciences.

Mr. Attorney's
Reply to the
Prisoner's De-
fence.

Mr. Attorney reply'd, That Mr. Love had confess'd much more than *Misprision*; and that the frequent

frequent Repetition and long Concealment of these Acts was Treason; and as to the Ingenuity of his Confession, he thought there was little Ingenuity in making it, after it was plainly prov'd upon him; that his Imprecations, calling God to Witness he never wrote or sent a Letter, or lent Money, when it appear'd he had mov'd others to write, and to lend Money, were shameful Equivocations, especially in a Minister of the Gospel, but that the Eyes of Justice were not to be blinded by such impious Arts: That this Gentleman had been guilty of the highest Ingratitude, and studied the Destruction of the State, without any Provocation: That he was not only permitted to enjoy his Life and Liberty under this Government, but, by his own Confession, had one of the best Preferments in London, and never receiv'd the least Trouble or Interruption from the State; and what had he to do to interpose and disquiet himself with the Management of the Commonwealth? That he had dar'd to charge his Blood upon the Court; but it had been well if he had thought of Blood, before he had been instrumental in spilling so much in Scotland: That there would be no living in Society, if such Incendiaries were not brought to Justice; and that it was better one Man than a State should perish; and he hop'd the Court would consider what Justice was due to the Commonwealth. That the Prisoner having had three Days time allow'd him to prepare his Defence and run thro' the Evidence, he should say no more to it at present; but mov'd that the Court would appoint another Day for the Council for the State to make their Reply to the Prisoner's Defence.

Then the Lord *President* made a Speech to the Prisoner, wherein he observes how zealous the Prisoner seem'd to be for the restoring the Presbyterian Government; and told him, he agreed that it might tend much to the Peace of the Nation if it were universally receiv'd; but he did not approve of it as attended with *Scotch* Limitations, or a *Scotch* Covenant.

That he wonder'd a Divine should profess Ignorance in the Laws of *England*, for they were no other

Page 693.

Page 694.

Page 695.
The President
makes a Speech
to the Prisoner.

Tells him the
Laws of *Eng-
land* were the
other Laws of God

other than the Laws of God founded on the very Decalogue itself.

That there was not any Treason, or notorious Villany, but a Priest had a Hand in it.

That the Prisoner had shewn his Gift of Oratory, in summing up the Evidence, and making his Glosses and Observations upon it, which was the proper Business of the Court; and he took occasion to tell him, that the Orators among the Heathens were ever the principal Incendiaries; and that there were hardly any Heresies, Murders, Treasons, or any other notorious Villany perpetrated in Christendom, but Priests, or those that call themselves Ministers of Jesus Christ, had a considerable Share in them. That tho' he valued himself upon his Office, their Office of administering Justice was superior to his, who only taught it; and that Judgment and Justice was the highest Religion in the World. Then the Court adjourn'd.

Fourth Day. June 27, 1651.

A brief Account of the Conspiracy.

The Court being set, Mr. Hall, of Council for the Commonwealth, again open'd the Charge, and afterwards gave a short Narrative of the Plot, collected from the foregoing Evidence.

Page 696.
Sir Tho. Witherington's Reply to the Prisoner.

Sir Thomas Witherington, the Commonwealth's Serjeant, undertook to answer the Prisoner's Objections, as to the Incompetency of the Witnesses, and some Things the Prisoner had said in relation to himself.

Page 697.
That Participes Criminis are good Witnesses.

As to the Witnesses being *Participes Criminis*, he said it was no legal Objection; for that where a Man is indicted of Treason, and confesses the Indictment and becomes an Approver, he has ever been held a good Witness against all Persons guilty of the same Treasons with himself; and he does, by our Law, merit his Pardon by it; and where they became so serviceable to the State, there was no reason but they should be deem'd *probi Testes* as well as *legales Testes*.

As to the next Objection, That there was not more than one Witness to any one Fact; indeed he did agree, that according to the Law of the Land, and the Laws of God, there ought to be two Witnesses in Treason; but in a Case, consisting of

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complicated Facts, and a Reiteration of many Actions, it was not intended there should be two Witnesses to every Fact; but if there was one Witness to one Fact, and another to another Fact, both tending to the Accomplishment of the same Species of Treason, these were two Witnesses, as the Law requir'd; as when one Witness says he was present at Mr. Love's at the reading a Treasonable Letter, a second attests the writing of it, and a third the sending of it, tho' they speak to several Parts of the Business, yet all concurring to the same Treason, this is a legal Proof.

One Witness to one Fact, and another to another Fact, tending to prove the same Treason, deem'd two Witnesses.

As to what Mr. Love had observ'd, That in Treason the Proof ought to be as clear as the Sun, *Probationes oportent esse luce clariores*: He thought it difficult to meet with such Proof where a Plot was hatch'd in Darkness and Secresy; that here every Thing had been transacted under a Disguise; their very Meetings and Consults went under the Title of Prayer and Fasting; and their Contributions to foment a Rebellion, pass'd under the Name of charitable Uses; nor could any Place be more obscure and unsuspected than Mr. Love's House, who was a Minister of the Gospel, and one who had been so very active in the Parliament's Service, as he had urg'd by way of Merit; but that notwithstanding they had gone through these Difficulties in their Evidence, they had at length prov'd the Charge against the Prisoner to a Demonstration.

Page 698.

Their Consults went under the Name of Fasting and Prayer, &c.

Then Mr. Attorney proceeded to answer some other Parts of Mr. Love's Defence; as to the Objection, *That he was charg'd with Crimes committed before this Court was erected, and so they had no Cognizance of them*; he answer'd, that tho' the Laws were made before the Court was erected, their Commission gave them Power, in express Terms, to take Cognizance of those Laws; and that it was never thought an Objection at the Assizes, that the Offences were committed before the Judges receiv'd their Commissions. Nor did he stand charg'd with any Crime before there was a Law made for the Punishment of it; for that on the 30th of January, 1648, there was an Ordinance pass'd, *That whoever should proclaim, declare, publish, or any way promote*

Mr. Attorney's further Reply.

Page 699.

Charles

The TRYAL of

Charles Stuart, or any other Person, to be King or Chief Magistrate, without Consent in Parliament, should be adjudg'd a Traitor; and against this Law Mr. Love had highly offended; nor was there any time limited for Prosecution by this Act. That the next Law Mr. Love was charged with the Breach of, was made in July 1649, and entitled, *An Act declaring what Offences should be Treason*: The third was a Law which constituted the Court, and shew'd of what Offences they were to take Cognizance: And the fourth was the Act concerning the Scots. Then Mr. Attorney desir'd Leave to repeat the Evidence, and make his Observation on it for the State: And said, that as the Prisoner had had the Favour of a Person allow'd him to take Notes, so he had employed Clerks, by the help of whose Notes he was able to repeat the Evidence exactly as it was delivered.

Page 700.

And first he observ'd, that though it did not appear, that the Prisoner was at the first Consults at *Dowgate*; yet it appear'd that he was afterwards consenting, and approving what had been agreed upon by those Conspirators there, and so was guilty of the first Fact. [Here he repeats the Evidence of the Consults at *Dowgate* and *Breadstreet*.] The next part of the Evidence he repeated was the Consult at Mr. Love's House (Love being present) concerning the sending Major *Alford* over to Col. *Titus* at *Calais*, and of *Alford's* giving an Account of the State of Things at Mr. Love's House at his Return, and concerning the reading the Narrative of *Titus's* Transactions in *Jersey*, and the Copy of the King's Letter there; of the Motion for giving *Titus* Thanks; and concerning the sending over a Commission and Instructions to treat with the King and the Scots; which last Particulars he observ'd were prov'd by four Witneses, (viz.) *Adams*, *Alford*, *Jaquel* and *Far*, and indeed not denied by Love, only he said he was against sending the Commission, &c.

Page 701.

because he thought, as private Persons, they had not Authority to do it; though Major *Huntington* had testified, that upon the debating that Matter Mr. Love said, *Come, come, let it go*. From the whole he infer'd, that Mr. Love was guilty of something more than Misprision, for that was only a simple Act of

Page 702.

That Mr. Love had confess'd his debating on treasonable Matters, which was more than Misprision.

not Authority to do it; though Major *Huntington* had testified, that upon the debating that Matter Mr. Love said, *Come, come, let it go*. From the whole he infer'd, that Mr. Love was guilty of something more than Misprision, for that was only a simple Act of Omission,

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Omission, and here he had acknowledg'd his debating these Matters; and though he pretended to detest and abominate some of their Measures, still he continued amongst them, and had several Meetings and Consultations afterwards in his own House, and therefore must be adjudg'd guilty of the Whole, there being no Accessaries in Treason.

Then he read the Evidence of *Potter* and *Bansfield* concerning the Reading the Narrative, and Letters from the *Scots*, &c. after *Dunbar* Fight, by *Mr. Love* and others, at *Love's* House, and of their rejecting the *Scots* Proposals, but agreeing however to raise some Money for the *Scots* Agent, and the Messenger, and to supply the Necessities of *Titus* and *Massej* who were in Arms with the *Scots*; and particularly Major *Alford's* Testimony was insisted on, who had depos'd, That *Mr. Love* did then move them to contribute Money for the last mentioned Purposes; and the Testimony of Captain *Far*, who, coming late to that Meeting, depos'd, That *Mr. Love* told him a Letter was come from *Massej* for assisting the King with Men and Money; but that they had agreed only to raise a Sum for *Titus* and *Massej* to relieve their Necessities; and that *Mr. Love* mov'd the Deponent to contribute; and that thereupon the Deponent fetch'd 5 l. and laid it down on *Mr. Love's* Table.

Page 703.

Page 704.

Mr. Attorney added, that if *Titus* and *Massej* were Traitors, *Love* must be so too, who assisted them in the carrying on their traiterous Designs.

The aiding a Traitor knowingly is Treason.

As to the Objection, that none of the Witnesses had depos'd, that the Prisoner had been guilty of raising any Sedition, Insurrection or Rebellion; he answer'd, he had been prov'd to be guilty of those Things which had a Tendency to the raising a Rebellion, &c. And though the thing was not accomplish'd, he was nevertheless guilty of Treason; that if they must wait till the Rebellion was actually rais'd before the Conspirators were call'd to an Account, it might then probably be too late to question them.

He again took Notice of the Equivocations and Evasions in *Mr. Love's* solemn Appeals to God at the beginning of the Tryal, and shew'd how unbecoming

Page 705.
The Evasions in *Love's* solemn Appeals to God of his Innocence.

coming they were of a Christian, much more of a Minister of the Gospel.

Page 704.
The Ingratitude of conspiring to subvert a State, who had been so indulgent to him, resorted upon him.

And as to Mr. Love's taking it ill at the Hands of the State, that he should suffer by them for whom he had done and suffer'd so much, he thought the State had the most Reason to take up the Complaint. Had a Cavalier, a profess'd Enemy, conspir'd against them, they might have borne it: But that Mr. Love, who had preach'd and pray'd for them, and gone along with them; that he who liv'd like a petty King in this Commonwealth, and enjoy'd so much under their Protection, that he should conspire against them, this was a high Aggravation of his Crime; Nor could it be thought strange that he, who in these Circumstances prosecuted the State, should be prosecuted by them.

The Prisoner's urging he thought himself oblig'd by the Covenant to do what he had done, taken as a Reflection on the Government.

And as Mr. Love profess'd he thought himself oblig'd in Conscience, and by the Covenant, to seek the Good and Union of the two Nations, and to reconcile them to the King, and is pleas'd to declare he should still retain his old Principles, and not be mov'd by any Terror to forsake them; and declared further, *That when he look'd upon all the Vows, Covenants, Declarations and Protestations of both Houses of Parliament, he found a Suitableness between his Judgment and them, and was not conscious of any thing he had done in Opposition or Contradiction thereto*: These Expressions he thought did obliquely reflect upon the present Government; and that Mr. Love urg'd the Covenant as an Excuse for those things which the Parliament had forbid.

Page 707.

As to Mr. Love's threatening the Court, and telling them if they censur'd him upon a Political Interest, the Scripture accounted it not Justice, but Murder: He answer'd, it was the Political Interest of every State to do Justice; and if the Court were satisfi'd the Facts were prov'd that the Prisoner stood charg'd with, it was Justice to censure him, and not Murder. And he thought some Passages in the Prisoner's Sermon, at the Treaty with the King at Uxbridge, very applicable to the present Occasion, which he therefore took leave to read; (Viz.) *I have ever thought that too much Mercy towards*

Malignants

Malignants hath made more Delinquents than ever Justice hath done. Mercy should not weigh down Justice : In God they are both equal ; why should it not be so in Man ? The sparing of Offenders hath made many worse, few or none better. To them that have shew'd no Mercy, let Judgment be shew'd without Mercy : Much Guilt contracted, much innocent Blood spilt, which must be aveng'd either on us, or by us. And those who lie under the Guilt of much innocent Blood are not meet Persons to be at Peace with, till all the Guilt of Blood be expiated either by the Sword of the Law, or the Law of the Sword ; and a Peace can never be safe or just till then.

And upon the whole, Mr. Attorney left him to the Justice and Judgment of the Court.

Then Mr. Love offer'd a Paper of Exceptions to the Court, and pray'd Council to argue them : Whereupon the Court adjourn'd into the Painted-Chamber, and being return'd, the Prisoner was acquainted he should have Council to argue his Exceptions ; but that they should put it under their Hands what Points of Law they intended to argue, and bring them to the Painted-Chamber on Tuesday Morning next : And at the Prisoner's Request the Court assigned him Mr. Maynard, Mr. Hale, Mr. Waller, and Mr. Archer, to be of his Council.

Some Passages in the Prisoner's Sermon at the Treaty of Uxbridge rise in Judgment against him.

Page 709.

The Fifth Day. July 1. 1651.

This Day Mr. Love's Solicitor deliver'd the Exceptions into the Court, which sat in the Painted-Chamber, sign'd by Mr. Love's Council, and are as follow :

Mr. Love's Exceptions to the Charge.

First, That whereas the Act of the 17th of July 1649 says, That if any Person shall maliciously, or advisedly plot, contrive or endeavour to raise Forces against the present Government, or for the Subversion or Alteration of the same, and shall declare the same by open Deed, that every such Offence shall be Treason.

Page 710.

Except. 1. The Words maliciously or advisedly are left out of the Charge.

2. The Words plot, contrive and endeavour are omitted likewise.

3. It

The TRYAL of

3. It is not Treason within that Act, unless the same be declared by open Deed ; and it is not charg'd that the said *Christopher Love* did declare the same by any open Deed.

Secondly, That the Act of the 30th of January 1648 says, That no Person do presume to proclaim, or publish, or any way promote *Charles Stuart* to be King, &c.

Exception. That the Prisoner is not expressly charg'd to have done this after the Act made ; neither did the Charge pursue the Words or Intent of the said Act.

Thirdly, The Act of the 17th of July 1649, says, That if any Person shall procure, invite, aid or assist any Foreigners or Strangers to invade *England* or *Ireland*, or shall adhere to any Forces raised by the Enemies of the Parliament, &c. every such Offence shall be Treason.

Except. 1. That it is not alledg'd who in particular were the Strangers that were invited to invade *England*.

2. It is not alledg'd, that at the Times of the Invitement, Aid and Assistance, laid in the Charge, the Scots were Strangers.

3. That it is not alledg'd particularly, to the Forces of what Enemies rais'd against the Parliament *Christopher Love* did adhere.

4. It charges the Prisoner with a treasonable Assistance in some Years that were before the said Act of the 17th of July 1649 was made.

5. It charges him with advancing the said traiterous and wicked Design, when several Charges of Treason, being before express'd, it is uncertain to which Design it refers.

Fourthly, By the Act of the 26th of March 1650, the Matters there prohibited are not made Treason.

Except. 1. That the Charge is mislaid, the Offence being charg'd to be done traiterously.

2. The Charge is uncertain, being alledg'd in the disjunctive (or otherwise,) and shews not in what other manner.

Fifthly, The Act of the 2d of August 1650 says, That every Person who shall hold Correspondence, &c.

Ec. with any Person of the *Scotish* Nation residing in *Scotland*, without Licence of Parliament, the Council of State, or the Lord-General; or with any Person of the *Scotish*, or any other Nation, whom they shall know to adhere to the *Scotish* Nation, in this War against the Parliament.

Except. 1. That it is not laid that the Persons of the *Scotish* Nation, mention'd in the Charge, were residing in *Scotland*, nor expressly alledg'd he did adhere.

2. It does not aver, that such Correspondence was held without the Licence of Parliament, *Ec.* nor in what War the Correspondence was held.

3. It is not laid with what particular Persons of any other Nation, adhering to the *Scotish* Nation, Correspondence was held, or of what Nation they were.

4. This Correspondence is not laid to be after the fifth of *August* 1650, mentioned in the said Act made the second of *August* 1650, but refers to a Time preceding that Act.

Sixtly, The Act of the second of *August* 1650 is, That no Person, who shall abet, assist, *Ec.* the *Scotish* Nation, or any other Persons adhering to them, under their Power, or in Confederacy with them, without the Licence of the Parliament of *England*, Council of State appointed by their Authority, and of the Captain-General of the Parliament's Forces, as aforesaid.

Except. 1. That there are no particular Persons named, who were abetted, assisted, *Ec.* neither of the *Scotish* Nation, or of any other Persons adhering to them.

2. In the Charge, the sending Money, *Ec.* is laid to be done without the Licence of Parliament, or Council of State, *Ec.*

3. The Time to which it refers is between the 29th of *March* 1650, and the first of *June* 1651, part of which Time is before the Act of the second of *August* 1650 was made.

ALLEGATIONS by Christopher Love, touching the Matters and Proof upon the Charge.

Exceptions to
the Evidence.

That one of the Witnesses had been promis'd a Reward, and menac'd with Punishment:

That one of them had receiv'd extraordinary Rewards.

That several of them were *Participes Criminis*.

That no two prove any one treasonable Fact.

And that no Witness prov'd more than a Concealment.

Chr. Love.

As this Case is stated, we conceive these Questions may arise.

1. Whether these be lawful and sufficient Witnesses?

2. Whether there be two lawful Witnesses?

3. Whether a Concealment of Treason be Treason within the late Acts?

Upon the Copies we have seen of the Charge (none of which indeed are Authentick) we conceive it fit to tender these Matters and Exceptions to the Court; and shall be ready to speak to any of them the Court shall direct.

Matthew Hale,

John Archer,

Tho. Waller.

Mr. Archer and
Mr. Waller the
Prisoner's
Council rejected
for refusing the
Engagement.

Page 712.

Page 713.

The Court being set in *Westminster-Hall*, and Mr. Love brought to the Bar, Mr. Archer and Mr. Waller, his Council, appeared; but Mr. Attorney demanding, if they had taken the Engagement? and they answering in the Negative, the Court would not permit them to speak: Whereupon they withdrew; and Mr. Hale was sent for, and the Court demanded of him also, if he had taken the Engagement? and he answered, he had; and mov'd, that his Client might have a Copy of the Charge, and Time allow'd to prepare themselves to argue the Exceptions; and said, it was common to grant a Copy of that part of the Indictment whereon the Exceptions were grounded, if the Court did not think fit to grant a Copy of the whole Charge; but said in the Case of *Strafford* and Archbishop *Laud*, there was a Copy of the whole Charge granted.

Mr. Asser-

Mr. *Attorney* answer'd, That Parliamentary Proceedings were no Rule for other Courts : And besides, the Prisoner was question'd for offending against known Laws, whereas my Lord *Strafford* and the Archbishop were not charg'd with Treason committed against any positive Law ; but that the Parliament, for several accumulated Facts under the Degree of Treason, did adjudge them guilty of Treason ; and therefore they had much more Reason to have a Copy of their Charge than the Prisoner.

Then the Court propos'd, That the Charge, and the several Acts, and the Exceptions, should be compared together in Court, to see if there was any real Foundation for the Exceptions which had been offer'd.

And it appear'd, That the first Exception was founded on a Mistake, for the Word *maliciously* was in the Charge. And as to the second, the Words *plot, contrive and endeavour* were also found to be in.

Page 714.

As to that Exception, that to make it Treason within the Act, on which the first part of the Charge was founded, some Overt-Act ought to have been laid ;

Whether an Overt-Act must be laid in every particular Charge.

Mr. *Attorney* answer'd, there were several Overt-Acts mentioned afterwards in the Charge, which were to be applied to the whole.

Mr. *Hale* answer'd, that this was a distinct Treason from what follow'd ; and that the holding Correspondence by Letters, &c. could not be an Overt-Act of Treason relating to the first Charge.

The President said, That the Charge was founded upon four Statutes ; and if it was laid that the Prisoner had offended against the first, second, third and fourth ; and then it was concluded generally, that to accomplish his aforesaid Treasons he held Correspondence by Letters, &c. that would relate to every one of them.

Page 715.
Ruled, that a general Conclusion was sufficient, and referred to every particular Charge.

Mr. *Attorney* added, That all the Treasons mentioned in the Charge (though against four several Acts) tended to the Subversion of the Government. This was the Foundation of the whole, and the Charge concluding, that those several Practices and Designs

The same Certainty not requisite in an Impeachment as in an Indictment.

Designs were against the Form of the several Statutes in that Case made and provided, (and not particularly against that of the 17th of July, or the second of August) it was sufficient: Besides that, in Impeachments they were not tied up to those nice and formal Rules as upon Indictments.

Mr. Hale notwithstanding held, That where a substantial Part of the Charge was omitted, which ought to have been alledg'd in Fact, it was not the Conclusion, *that contrary to the Form of the Statutes in this Case made and provided*, would help it: He said he acknowledg'd, that the Formalities concerning the Tryal were not the same as upon Indictments: But for such Matters as were especially and substantially requir'd by the Act of Parliament, those ought no more to be supplied by Intendment in a Charge before this Court, than in an Indictment for Treason. And that Sir Edward Coke, in his Comment on the 25 Edw. III, where there are several Species of Treason enumerated; one, the Compassing the King's Death; another, Levying War, &c. says, that one Treason in an Indictment shall not be construed an Overt-Act of another; because all are made equally traitorous: So here, if the former Treason charg'd be not a Treason able to support itself, this subsequent Act shall not serve as a Bolster to uphold it, and to supply that which is laid as a distinct Treason of it self. And therefore he insisted on these three Points, 1. That an Overt-Act was necessary to be laid; 2. That it could not be supplied by a general Conclusion: 3. That this Overt-Act of Correspondence could refer no more to the first Design, than to the second or third, which were charg'd as distinct Treasons.

Ruled, that since the Treasons were of the same Species, the Overt-Acts laid in one Charge should refer to all.

But the Lord-President over-ruled this Exception, and said, that since the Treasons were all of one Nature or Species, and the Overt-Acts laid were Overt-Acts, or a Manifestation of every Charge laid, it is well enough; and the Overt-Acts laid in the subsequent Charge might refer to them that went before.

Page 717.

The next Exception Mr. Hale insisted on, was, That there was a treasonable Assistance charg'd in some

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some Years, that were before the making the Act that did prohibit it.

Mr. *Attorney* answered, that there was a Law in 1648, that forbid the promoting the Interest of *Charles Stuart*, and consequently the Calling in foreign Aid; that he did not charge this to be an Offence against this or that Act, but concluded generally, that these Treasons were committed against the said Acts; and if they were against all or any one, it was well enough.

To which Mr. *Hale* reply'd, as in the other Case, that that was not sufficient, because it was a Charge of Treason in itself, and therefore could not be made an Additional and Supplemental Charge to make out another.

The President said, That indeed where the destroying the King, and levying War, were laid as two distinct Treasons, the one should not serve as an Overt-Act of the other; but that levying War might be laid as an Overt-Act of a Design to destroy the King; and that here all these Overt-Acts were laid as conducing to that general Design of subverting the Government; and so well enough.

Page 718.

Levying War may be laid as an Overt of compassing the King's Death.

The next Exception Mr. *Hale* insisted on was, That they had laid this Correspondence to be *traiterously held*, when the Act against Correspondence does not make it Treason: Mr. *Attorney* admitted, that it was not express'd in the Act of the 29th of March 1650, what the Offence should be; but he said, that this was an Offence also against the first Act of the 30th of January 1648, which makes the promoting the Interest of *Charles Stuart* High-Treason.

Mr. *Hale* said, that was but by way of Interpretation, or Inference: But the Court over-rul'd him, and held, it was not interpretative, but positive.

Page 719.

The next Exception insisted on was, that it is charg'd, that within the several Days and Times, in the respective Years aforesaid, he held Correspondence, &c. and the Times aforesaid (last mentioned) are between the 29th of March 1650, and June 1651; whereas the Act which makes the Correspondence treasonable, does not take place till the fifth of August 1650; so that it might be within

the Times aforesaid ; (viz.) between the 29th of March 1650, and June 1651, and yet not contrary to the Act of August 1650 ; it might be as well before the making the Act as after it.

Page 720.

Sir T. Witherington said, they had laid it both within and without the Time ; and the Witnesses having prov'd it to be within the time prohibited by the Act, it was well enough.

The Evidence cannot supply a Defect in the Charge.

To which Mr. Hale answer'd, That the Proof should never supply the Insufficiency of the Charge ; and that what might be alledg'd against the Charge before the Proof made, might as well be alledg'd afterwards.

The President held, that since it appeared by the Proof, that this Correspondence was since the Time prohibited by the Act, it was sufficient.

Page 721.

Mr. Hale still insisted, that in a Case of this Nature, the Time must be precisely laid : And as the Statute of the 29th Eliz. enacts, That whoever entertains a Jesuit knowingly, shall be guilty of Treason ; if it should be said in the Indictment that such a Man between the 28th of November, in the 28th Year of the Queen, and the 28th of December, in the 29th Year of the Queen, did entertain such a Jesuit, the Indictment would be naught, because it takes in a Time not prohibited by the Statute ; and the concluding that it was contrary to the Form of the Statute, would not help it, since it might be done before the Statute was in Force.

If an Indictment takes in a time before the Act it was founded on was made, it is vicious.

Mr. Attorney said, this Corresponding being an Offence against every one of the Acts mention'd in the Charge, he did not lay it as an Offence against this or that Law in particular ; and if it were Treason by any one of them, it was sufficient to support the Charge.

The last Exception was, as to the relieving Titus, and Sterk, a Scotchman ; that this was said to be done traiterously, whereas it was but Felony.

Page 722
Where an Offence against a Statute shall be construed Treason, and where Felony, when the Nature of the Offence is not specified in the Act.

To which the President answer'd, That if a Statute make a thing Felony that was not Felony, or recites a thing which was Felony, and says it shall be punish'd with Death ; there, indeed, the Offence was but Felony ; but where the Statute recites an Offence, which before was Treason, and

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says that the Offender shall suffer Death for it, whoever is guilty of such an Offence shall be adjudged a Traitor on such a Statute.

As to the other Paper of Exceptions Mr. Love had given in concerning Concealment of Treason, and the Competency of the Witnesses, the Court acquainted Mr. Hale that he need not argue them; for as to Concealment, whether it were Treason or no, did not come in question now, many other treasonable Acts having been prov'd against Mr. Love, and those Exceptions to the Witnesses had been before over-rul'd, viz. That one who had confess'd himself *Particeps Criminis* was a good Witness: That one Witness to one Fact, and another to another, tending to prove one Species of Treason, were two Witnesses in Law: And that the Testimony of a Witness was not to be rejected, tho' the Government gave him a Reward for making the Discovery, for that had ever been held legal in case of an Approver.

Page 723.

The Prisoner's Exceptions, as to the Incompetency of the Witnesses, over-rul'd.

Mr. Hale said, he was still of Opinion, that one who was threaten'd with Death if he did not give Evidence against another, was not a legal Witness; and that the Case that had been put, concerning an Approver, did not come up to the Question; for tho' it was true at Common Law, an Approver might be a Witness, yet now the Witnesses ought to be such as were requir'd by the Statutes of *Edw. VI.* viz. *lawful and sufficient Witnesses*, which he did not think these were. That at Common Law the Defendant might either wage his Battel, or put himself upon his Country; and then it was in the Breast of the Jury whether they would believe the Approver or no: But by the Acts of the first and fifth of *Edward VI.* it is expressly said, *There shall be two sufficient Witnesses in Case of Treason*; and this had made an Alteration in the Common Law; one Witness was enough before, but now two were requisite; and he conceiv'd the Words *lawful and sufficient* excluded such Persons as Approvers were, especially in a Case where the Court were both Judge and Jury, and try'd Fact as well as Law: And as to the Plurality of Witnesses, he said, where a Man was indicted upon one Act of Treason, two

Page 724.
Whether one threaten'd with Death be a competent Witness.

Approvers, whether good Witnesses in Treason since the first and fifth of *Edw. VI.*

Page 725.

Mr. *Hale* of
Opinion that
two Witnesses
were necessary
to prove some
one treasonable
Act.

Page 726.

Mr. *Love* moves
for more time,
but denied.

Page 727.

Page 728.

Mr. *Attorney*
moves for Judg-
ment against
him.

The Sentence
pass'd,

Witnesses were requir'd; and held, that if the Charge were upon several Acts of Treason, then there must be two Witnesses to bring the Party within any one of those Acts. And he held further, that where a Person is indicted upon one Act, two Witnesses were requir'd to some one Overt Act; and that one Witness to one Overt Act, and another to another, of the same species of Treason, were not two Witnesses as the Law requir'd.

Mr. *Love* desir'd, that since two of his Council were rejected, and another could not come, and that Mr. *Hale* came unprepar'd, the Prisoner having not seen him till that Morning; and since he could produce Evidence, that several of the Witnesses were induc'd to swear against him in particular, by Threats and Promises of Reward; he desir'd he might have three other Council added to Mr. *Hale*, and a Copy of the Charge, and longer time to argue the Exceptions. But the Court told him there was nothing further to be debated; and if he had Witnesses he ought to have produc'd them before; and that it would be endless to defer Matters upon such Suggestions. Then the Prisoner was remanded, and the Court adjourn'd.

Sixth Day. July 5, 1651.

This Day Mr. *Attorney* mov'd the Court that they would proceed to Sentence against *Love*; whereupon the President demanded of the Prisoner what he had to say why Sentence should not be pass'd upon him. Mr. *Love* insisting still on more time, that Motion was rejected; and after a Speech made by the President, he commanded the Clerk to read the Sentence, which was as follows:

"Whereas *Christopher Love*, the Prisoner at the Bar, stands charg'd on behalf of the Keepers of the Liberties of England, &c. of High-Treason, and other High Crimes and Offences, &c. [Here the Charge is recited] For all which Treasons and traitorous and wicked Practices of him the said *Christopher Love*, this Court doth adjudge him to suffer the Pains of Death, by having his Head sever'd from his Body.

After

After which Mr. Love said, My Lord, tho' you have condemn'd me; yet this I can say, that neither God nor my own Conscience doth condemn me.

Then he was remanded to the Tower.

The Tryal of JOHN GIBBONS for High-Treason, before the High-Court of Justice, in Westminster-Hall, the 18th of July 3, Car. II, 1651.

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N.B. This Tryal was so imperfectly and unskillfully taken, that it would not have been inserted, but that it shews some of the Steps the zealous Assertors of Liberty and Property, of those Days, took to enslave themselves and their Fellow Subjects, and to establish a perfect Tyranny.

THE Charge was, by way of Impeachment, prefer'd by the Attorney-General of the State;

and set forth, "That the said John Gibbons, as a
"false Traitor to the Commonwealth, &c. intending to stir up a new and bloody War, did, on
"several Days and Times in the Year 1648, 1649,
"50, and 51, at London, &c. together with Christopher Love, Henry Piercy, Edward Massy, Silas
"Tissu, and other false Traitors, traiterously and
"maliciously contrive and endeavour to raise Forces
"against the Government, as it was settl'd and
"establish'd in a Commonwealth and Free-State,
"without a King and House of Lords, in order to
"subvert the same: And that to accomplish his
"said traiterous Purposes, he, the said John Gibbons,
"together with the said other Conspirators (since
"the Death of Charles Stuart the late King) did
"traiterously and maliciously declare, publish and
"promote Charles Stuart, eldest Son of the said late
"King, to be King of England, without Consent of
"the People of England and Parliament first had.
"And also did traiterously and maliciously invite,
"aid and assist the Scots, being Foreigners and
"Strangers, to invade this Commonwealth; and

Impeachment
for High-Trea-
son, and other
Crimes, prefer'd
by Prideaux
Attorney-Gen-
eral of the State.

The TRIAL of

"adher'd to the Forces of the Enemy rais'd
 "against it. And that the said *John Gibbons*, in
 "order to effect his said traiterous and wicked De-
 "sign, did also, between the 29th of March 1650,
 "and the first of June 1651, traiterously and ma-
 "liciously hold Intelligence with the said *Charles*
 "*Stuart* the Son, by Letters, Messages, Instructions
 "and otherwise; as also with the late Queen his
 "Mother, and with the said *Henry Percy* and others,
 "being of the Council, and abiding with the said
 "*Charles Stuart* the Son. And that the said *John*
 "*Gibbons*, the better to effect his said traiterous
 "Design, did also maliciously and traiterously hold
 "Intelligence with the Earls of *Argyle*, *Lowdon*,
 "*Lothian*, and others of the *Scotch* Nation; and
 "with others whom the said *John Gibbons* well knew
 "adher'd to the *Scotch* Nation, against the Parlia-
 "ment and Commonwealth of *England*; and did
 "abet, aid and assist them with Money, Arms, &c.
 "against the Commonwealth and Free-State of
 "*England*, in Breach and Contempt of their Laws
 "and Statutes, &c.

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The Prisoner
 insists on his be-
 ing try'd by a
 Jury, according
 to the antient
 Constitution.

The Court being set, and the Prisoner brought to the Bar, the abovesaid Impeachment was read; and the Prisoner desiring to hear it again, it was read a second time. Then the Prisoner insisted on his being try'd by a Jury of his Neighbours, according to the antient Fundamental Laws; and said he should betray that Liberty he was born to, if he did not insist on that manner of Tryal; but he was told by the Court, that the State had prescrib'd another way more honourable and advantagious for him, which he must submit to; and that they expected he should plead either *Guilty* or *Not Guilty*.

The Prisoner then desir'd he might have Council assign'd him, and a Copy of his Charge, which being deny'd, he pleaded *Not Guilty*.

The Witnesses for the State being call'd, Major
Adams was sworn.

The Evidence.

He depos'd, That there was a Consult at the
Swan in *Fish-street*, to endeavour an Agreement be-
 tween the King and the *Scots*, and concerning the
 settling a Correspondence, and drawing up a Peti-
 tion

tion to the King; at which Consult the Prisoner *Gibbons* was present; and that there were also Letters sent and receiv'd from *Scotland*, which the Prisoner was privy to; and that there were Letters also sent to *Piercy* before *Titus* went over, at the reading of which the Prisoner was present: That afterwards there were Letters sent from the King, which were read at Mr. *Love's* House, where the Prisoner was present and heard them; as he did those that were read at Mr. *Love's* after *Dunbar* Fight. And that *Gibbons* brought a rough Draught of the Instructions that were to go to *Holland* to Mr. *Love's* House: And that the Prisoner was a constant Man at all their Meetings; and particularly, he was present at Mr. *Love's* when the Letter was read that came from *Massej* for Arms and Money, and 3 or 400 Pounds were agreed to be sent him; and when a Letter written to *Scotland*, to procure *Massej* and the *English* Esteem amongst them there; and that *Gibbons* us'd to acquaint the Deponent where the Consults were to be held.

Major *Alford* was sworn.

He depos'd, That he was at a Consult at the *Swan* at *Dowgate* with Captain *Titus* and others; and that Captain *Titus* gave them an Account of the good Inclinations of the King; and declar'd he was willing to cast off the Cavaliers, if he could be assur'd that there was a Party in *England* that would adhere to the Covenant: That after this a Petition to his Majesty was drawn up, and read and debated of among them at the *Bear* in *Bread-street*, and Captain *Titus* was sent over with it; but the Deponent could not be positive the Prisoner was at either of those Meetings.

That a Commission was prepar'd at Mr. *Love's* for the Lord *Willoughby* and others; and Instructions concerning a Treaty between the King and the *Scots*, which the Prisoner and the Deponent carried down to *Gravesend*, and deliver'd to Mr. *Mason* (a Domestick of the Lord *Piercy's*.) That the Deponent was sent over to *Calais* by the Conspirators, and brought some Papers back, which were read at Mr. *Love's* House; but he could not be positive the Prisoner was at the reading of all of them,

The TRYAL of

tho' he said the Prisoner was often with them at the Swan at Dowgate, and as constant at their Clubs as any Man; and when they met *Mason* at *Gravesend*, the Prisoner desir'd the Deponent to treat *Mason*, and express a Friendship for him, that *Mason* might represent their good Affections to the King.

Mr. *Harvey* was sworn.

He depos'd, That *Gibbons* told him of 2000*l.* which was sent to *Scotland*; and that *Masse*y was to land with Forces in the West; and that many Soldiers were deserted from the Lord General; and that the Train'd-bands in the North waited but for one Blow to be given in *Scotland*; and told him also of a Town that was to be deliver'd up.

Major *Huntington* was sworn.

He depos'd, That *Gibbons* first acquainted him with the Conspiracy; and told him he might hear News at Mr. *Love's*; And that the Deponent went to Mr. *Love's* House, where *Gibbons* also was present; and a Paper sent from *Masse*y, *Graves* and *Titus* was read.

[Several other Witnesses were examin'd, who gave an Account of the Conspiracy in general, but said nothing further that affected the Prisoner, than is contain'd in the above Depositions.]

The Evidence having been very long, the Prisoner desir'd he might have some Time allow'd him to prepare his Defence, and a Copy of the Charge, and Council. But a Copy of the Charge and Council were denied him, tho' they thought fit to give him time till the 23d of *July* to proceed in his Defence.

July 23, 1651.

Page 732.
The Court take away all the Notes a Clerk of the Prisoner's had taken in order to make his Defence.

The Court being set, the Prisoner acquainted them that he was as ill provided for his Defence, as when he was before them before; for that having employ'd one to take Notes of the Charge as it was read, and also of the Evidence, the Court had order'd the Notes to be taken away, and deny'd him of all Means for his Defence; and desir'd he might have his Notes again, or a Copy of the Charge and Depositions, or it was impossible he should offer any thing material: And desir'd he might

might not have harder Measure than Sir *John Gell* and Mr. *Love* had had before him. This being refus'd, he told the Court he should but throw away his Life to enter upon his Defence without those Helps; but he hop'd the Court would consider how defective the Evidence was, and how full of Contrarieties and Contradictions; and that the Witnesses were not such as the Law requir'd, having confess'd themselves guilty of the Crimes he stood charg'd with, and gave their Testimony against him either through Fears of Death or Hopes of Reward: And desir'd them to consider that there was but one Witness, viz. *Adams*, who depos'd he brought the Draught of the Instructions to Mr. *Love's*, and was present at the reading the Letters that came after the Fight at *Dunbar*; or that he (the Prisoner) was at those Consults at the Swan; or when it was debated what Money should be sent to *Titus*, &c. these were Facts which he desir'd the Court would observe none of the other Witnesses could attest: He shew'd also, that there was not any one of the other nine Witnesses that had been examined against him, had depos'd any thing that did corroborate or give any Colour to what Mr. *Harvey* had sworn; and, in short, that there was not any two of the Witnesses that attested any one Fact he was charg'd with: And said he was astonish'd to hear those Things testified against him by Mr. *Harvey*, he having neither spoke or thought them; and appeal'd to the Tribunal of Christ for the Truth of what he said; and if the Court would give him Time, he said he would shew that Mr. *Harvey* was unfit to be a Witness in any Court, having been indicted of several notorious Crimes in *Essex*, where he [*Harvey*] was once a Justice of Peace: The Prisoner said he had been represented as a Solicitor in this Conspiracy, but he abhor'd nothing more. He said, indeed, his Master being in *France*, and directing his Letters to one Mr. *Charbone's* in *Tower-street*, he us'd to go thither every Week to meet with them, and from thence he us'd to go to the Club that met hard by; but that he never heard any thing discours'd there, but such News as the publick Papers afforded; and that he never knew any thing transacted there that

The Prisoner
objects the In-
competency of
the Witnesses.

Page 732.

And that there
was but one
Witness to any
one Fact.

was

Page 735.

was prejudicial to the State: That the Government had seen the Letters he us'd to receive from his Master, which appear'd to relate only to his private Concerns, and did not contain any treasonable Matter: And suppos'd the Court would not look upon him [the Prisoner] as qualify'd to be concern'd in a Plot. He profess'd, if he had done any thing amiss it was through Ignorance, he did not know he had broken or offended against any Law; and he did not doubt, if the Court would afford him those Helps they ought, to make his Innocence appear; but whether they would or no he should rest satisfied; and pray'd God to direct their Consciences; and hop'd they would pronounce such a Judgment upon him as they might dare to look God in the Face hereafter. *And then the Court Adjourn'd.*

Friday, July , 1651.

Sentence pass'd
on the Prisoner.

The Court being set, and demanding of the Prisoner what he had further to say, he renew'd his Request for Council, a Copy of the Charge, &c. and repeated part of what he had urg'd the Day before. After which the Court directed the Clerk to read the Sentence; which was, *That the said John Gibbons should suffer Death as a Traitor, by having his Head sever'd from his Body.*

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The Case of Captain JOHN STREATER, on a Writ of Habeas Corpus, at the Bar of the Upper-Bench in Westminster-Hall, in Michaelmas and Hilary Terms, the fifth of Car. II, 1653.

NOVEMBER 1653, Captain Streater being brought to the Bar, the *Habeas Corpus* was read, viz.

The Habeas
Corpus.

“ By the Keepers of the Liberty of England, by
“ Authority of Parliament. To the Keeper of the
“ Prison of the Gate-House, in the Liberty of West-
“ minster, in the County of Middlesex, or to his De-
puty,

"puty, These, Greeting. We command you, that
 "the Body of *John Streater*, in the Prison under
 "your Custody detain'd, as it is said, together with
 "the Day and Cause of his taking and detaining,
 "by whatsoever Name the said *John* is call'd there-
 "in, you have before us in the Upper-Bench
 "at *Westminster*, *Wednesday* next after the Morrow
 "of *St. Martin*; to undergo and receive those
 "things which our said Court of Upper-Bench
 "shall then and there order concerning him in this
 "Part. And this you must not omit at your Peril.
 "And have you then this Writ. Witness *Henry*
 "Rolle at *Westminster*, the 12th of November, *A. D.*
 "1653.

By the Court.

Broughton.

Mr. *Streater* mov'd that the Writ might be fil'd,
which was done. Then he desir'd a Copy of the Re-
 turn, *which was also granted him:* After which his
 Council mov'd that he might be bail'd; but he was
 committed to the Custody of the Marshal of the
 Upper-Bench; and it was order'd by the Court
 that he should be brought to the Bar again the Fri-
 day following.

Colonel *Barkstead*, the Lieutenant of the Tower, An Act of State prohibiting the Lieutenant of the Tower to obey an Habeas Corpus in the Case of *John Lilburne*.
 appear'd, and gave his Reasons why he had not
 brought the Body of *John Lilburne*, pursuant to a
 Writ of *Habeas Corpus* issuing out of that Court, *viz.*
 That he had, the Monday before, brought the said
John Lilburne before the Court, in Obedience to
 their Writ of *Habeas Corpus*; and was order'd to at-
 tend the Court with him again this Day; but he
 had receiv'd a counter Order from the Council of
 State, dated the 23d of November, that *Lilburne*
 should not be brought before this Court, but abide
 the Pleasure of the House.

The Council for Mr. *Lilburne* said, That they had
 no Instructions from their Client, for they had not
 Access to him; and desir'd an *Alias Habeas Corpus*;
 but the Court told them that the Council of State
 had reason for what they did. Council denied Access to their Client.

Friday,

Friday, November 23, 1653.

Captain *Streater* being brought to the Bar again by Rule, the Return of the *Habeas Corpus* was read; in which two Warrants were recited, the first from the Council of State, dated the 12th of September 1653, and directed to the Keeper of the *Gate-house*, commanding him to receive and keep the Body of the said *John Streater*, being committed for publishing seditious Pamphlets against the State.

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The Second was a Warrant sign'd by the Speaker, and dated the 21st of November, and directed to the Keeper of the *Gate-house*, commanding him, by virtue of an Order of Parliament made the same Day, to receive and keep the said *John Streater* Prisoner, till he should be deliver'd by Order of Parliament.

Held that one committed for publishing seditious and scandalous Pamphlets might be bail'd.

Then the Rule of Court, that was made the *Wednesday* before, for committing the said *John Streater* to the Marshal of the Court, and bringing him here this Day, was read: After which Mr. *Twisden* said he was Council with the Prisoner, as to the first Order; and if there was no more in it than the publishing of scandalous Pamphlets, he might be bail'd, of which Opinion were the Court; and directed the Prisoner to speak to the second Warrant.

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Captain *Streater* insisted, that as to the second Part of the Return, which mention'd an Order of Parliament, he had this Exception, That it did not mention any Cause of his Imprisonment.

The Parliament shew no Cause in their Commitment.

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Which was contrary to Law and their own Resolutions in the last Reign.

As to that Objection, That the Parliament were not bound to shew Cause upon a Commitment, he thought the Parliament would not encourage any one to maintain such an Argument, so repugnant to their Honour, and which had been within Memory condemn'd by the Parliament themselves. That *March* the 17th, 1648, the Parliament declar'd that their Authority was only by Law; that they were sensible of the Excellency and Equality of the Law of *England*; that they would uphold the true approv'd Rules of the Law of *England*; and had declar'd also, that the good old Laws and Courts of Justice, and the Custom of *England*, were the Badges

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Badges of their Freedom, Right and Privileges. That by the 29th *cap.* of *Magna Charta*, None shall be taken or imprison'd but by a legal Proceeding, according to the old Law of the Land. And there being no lawful Cause shewn in the Return, let the Command come from whence it will, the Law will warrant a Discharge. And that an Order of Parliament could not over-rule or suspend Laws and Statutes: That an Order of Parliament was as different from an Act of Parliament, as a verbal Command was to a Command upon Record; for that there were not the Debates, Deliberation, and three times reading of an Order, as there was of an Act. That Sir *Edw. Coke*, in the fourth Part of his *Institutes*, *cap.* 10. intimates, that an Act of Parliament is not pleadable in a Court of Record, but by Record or under Seal; and much less an Order of Parliament, that is not recorded on the Parliament Rolls itself. And he observ'd, that tho' the Return said he should not be deliver'd but by Order of Parliament, the Order itself said only, That he should be committed in order to a Tryal, which he took this to be; nor would it any more contradict the Order of Parliament to discharge him, than to commit him to the *Marshall*, which the Court had already done.

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Then the Court demanded of Mr. *Attorney* what he had to say in answer to this.

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Mr. *Attorney* said he should not argue upon it, but acquaint the Court, that the Prisoner was committed by an Order of Parliament, which was not to give an Account to that Court. It was their Pleasure to commit him till he should be clear'd by an Order of the same Power; and that the Court could not but remember Orders of the like Nature.

The Court said it was true, there had been the like Order in the Case of *Lilburne*, *Chestwin* and others, who made their Addresses to the Parliament; and there was no doubt but if Captain *Streater* would apply himself to them, they would do him Justice; but that he being committed by them, who were a superior Court; and they only knowing the Cause of his Commitment, it was not fit for this Court to controul the Parliament, or to enquire into it: That the Parliament were the Supreme

The CASE of

Page 745.
The Court resolve that they could not discharge one committed by Parliament.

preme Power, and might alter the Laws or make what Orders they pleas'd; nor were they oblig'd to express the Cause of Commitment, as inferior Courts and Officers were; and that their Orders were no more to be question'd than their Acts; that there might be no necessity of reading a Bill three times now, as when the Legislative Power was in King, Lord and Commons. And Mr. Justice *Nichols* said, when he was Parliament Man, he knew several Acts pass'd with once reading. Upon the whole, they held that an Order made by the Parliament, in whom the Legislative now was, must be a Law to them, they dare not dispute their Authority.

Captain *Streater* mov'd, that if he might not be bail'd he might be committed to the *Marshall*, and not sent to the *Gate-house*; for that he had been wounded, he said, in the Service of his Country, and did not deserve to be shut up in Holes. And he conceiv'd, as they had Power to make him their Prisoner, contrary to the Order of Parliament, for three Days they might, by the same Power, continue him their Prisoner longer; but upon the Motion of Mr. *Attorney*, he was remanded to the *Gate-house*.

Hilary Term, 1653.

The long Parliament dissolv'd by Oliver.

In the Vacation of *Michaelmas* Term, the Parliament being dissolv'd, Captain *Streater* thought fit to apply himself to the Upper-Bench again for a *Habeas Corpus*; and upon Mr. *Dormer*, his Council, applying to the Court the first Day of *Hilary* Term, an *Habeas Corpus* was granted, returnable on the *Thursday* following, being the 26th of *January*.

January 26, 1653.

A Return of an *Habeas Corpus*, not sign'd by the Keeper, void.

Mr. *Streater* being brought to the Bar, it appear'd the *Habeas Corpus* was not sign'd by the Keeper of the *Gate-house*; whereupon the Court said they could take no notice of it; but granted him an *Alias Habeas Corpus*, returnable the 31st of *January*; and Mr. *Twisden*, Mr. *Freeman*, Mr. *Wild*, Mr. *Norbery*, and Mr. *Dormer* were assign'd by the Court to be of his Council.

Monday,

Monday, January 31, 1653.

Captain Streater was again brought to the Bar of the Upper-Bench, and mov'd that the *Alias Habeas Corpus* and *Return* might be read, which was done accordingly, and are as follow :

" Oliver Lord Protector of the Commonwealth of England, Scotland and Ireland, &c. To the Keeper of the Gate-house, &c. We command you, as formerly we have commanded you, that the Body of John Streater Gentleman, in Prison under your Custody detain'd, together with the Day and Cause of his Taking and Detaining, by whatsoever Name the said John is call'd therein, you have before us at the Upper-Bench in Westminster, upon Monday next after the 15 Days of St. Hilary next to come, to undergo and receive those things which our Court of Upper-Bench, aforesaid, of him shall consider of in this behalf. And this you must not omit in any wise, and upon Peril that will follow thereupon. Witness Henry Rolle at Westminster the 26th of January, 1653.

An *Alias Habeas Corpus* in the Name of Oliver the Protector.

The Return of this Writ appears in a certain Schedule thereunto annex'd, being the Answer of Aquila Wykes Keeper of the Gate-house Prison in Westminster. Page 746.

" To his Highness the Lord Protector of the Commonwealth of England, Scotland and Ireland, and the Dominions thereof, in the Upper-Bench at Westminster, at the Day and Place, in the Writ to this Schedule annex'd, named ; I do certify, that before the coming of the said Writ to me directed, that is to say, the 12th Day of September 1653, John Streater in the Writ nam'd was committed to my Custody, and there detain'd, by virtue of a Warrant from the later Council of State, the Tenor of which Warrant follows in these Words. The Return thereof.

Here follows the Warrant from the Council of State, and the Warrant from the Speaker ; and afterwards the Rule

The CASE of

Rule of the Upper-Bench, for remanding the Prisoner to the Gate-house.

And then she concludes. "And these are the Causes
"of the detaining of the said John Streater, whose
"Body before the Protector aforesaid I have ready
"accordingly, at the Day and Place in the said
"Writ contain'd, as I am within commanded.

Aquila Wykes, Keeper of the Gate-house.

Which being read, Mr. Attorney Prideaux said he had not due Notice; whereupon the Prisoner was remanded to the Gate-house; and on Friday the third of February was brought to the Bar again.

Friday, February 3, 1653.

The Prisoner being brought to the Bar again, his Council mov'd that the Writ and Return might be fil'd, *which was done*, and the Prisoner was committed to the Custody of the Marshal of the Upper-Bench.

Tuesday, February 7, 1653.

The Prisoner being brought up by Rule, his Council mov'd that he might be bail'd; for that the Parliament being dissolv'd, their Order was of no Force.

Mr. Attorney answer'd, That Parliaments could not be dissolv'd; and that the Parliament were the same Power that was in being now; and for that by his Commitment he was not to be deliver'd but by Order of Parliament, he conceiv'd the Prisoner could be deliver'd by no other Power; and he must be content till the Parliament met the third of September 1654. He admitted, that an Order of one or both Houses, when the Parliament consisted of King, Lords and Commons, would not be binding on a Dissolution; but now that Power was united in the Commons, their Order was of greater Force; nor was it material whether Cause was shewn or not, the Parliament might commit without; and it was to be presum'd they had Cause for so doing: And that supposing the Commitment had been in order to a Tryal in Parliament, then he conceiv'd the

Court

Court would not think fit to meddle with it. He added, That if the Prisoner would make Application for his Liberty to the present Authority, he did not doubt but it would be granted him; and let him know, That Parliamentary Authority was then in one Person: And moved that the Prisoner might be remanded to the *Gate-house*; *First*, For that it might be the Proceedings against him were not yet ripe, or they might be yet under Examination. *Secondly*, For that this would be the first Precedent of discharging one who was committed by so high an Authority.

The Council for the Prisoner reply'd: That Parliaments might and did determine, and then their Orders determin'd also, tho' their Acts continue: And said that this was not so much as an Order of Parliament, it was but a Warrant from the Speaker: That indeed Writs of Error were returnable in Parliament, but they were always after a Tryal had: That it had been ordain'd, *That whoever should say the Parliament continues, should be guilty of an high Offence*, and if they did not continue in being, their Orders could be of no force: That an Order of Parliament was not a Judgment of Parliament, and they were here *coram Proteſtore*, and desired the Prisoner might be bailed.

All Persons prohibited to say the long Parliament was in being.

Captain Streater beg'd Leave to add, That he had been represented by Mr. Attorney as a stubborn Person, and one who refus'd to make Application to the present Authority; which he denied, for that he did now make his Application to the present Authority, which was present judicially in this Court: That the Writ of *Habreas Corpus* was in the Name of the Lord Protector, by which it appear'd those Suggestions were false, and that he did own the present Authority in its proper Channel, and own'd its true Basis by applying himself in this Court, which was the only proper Place for Relief in Case of false and long Imprisonment; and the Lord Protector had sworn to govern this Nation according to its Laws, Statutes, and Customs; and therefore he pray'd to be discharged as the Law had provided.

The Protector swears to govern according to Law.

Page 750.

Mr. Attorney oppos'd the Prisoner's being discharged, and said, For ought he knew this Commitment was a Judgment in Parliament. That if the Order

False Imprisonment to detain one committed by Order of Parliament after a Dissolution.

was not good, he had an Action of false Imprisonment against the Jaylor, who ought to have set open the Prison Doors to the Prisoner, upon the Dissolution of the Parliament, if the Order died then; but he conceiv'd, the Commitment being by Parliamentary Authority, it had the same Stamp that an Act had, and it was not material whether the Words *Act*, *Order*, or *Ordinance* were us'd: And besides, the Prisoner knew that he might have his Liberty for asking for. Chief Justice *Rolle* said, He was not bound to apply himself elsewhere, but that the Prisoner should be remanded till *Saturday*, when they would deliver their Opinions.

Page 751.

Mr. Serjeant *Wilde* moved, That the Prisoner being in Custody of the Marshal of that Court, he might have Liberty to attend his Council with his Keeper, which the Court granted.

Saturday, February 11, 1653.

A Commitment for publishing seditious Pamphlets too general.

Orders of Parliament determine with the Sessions.

The Prisoner being brought to the Bar, the Lord Chief Justice *Rolle* deliver'd his Opinion; That the first Part of the Return was too general, it mentioning not what Books, or whose Books, or where they were, or when publish'd. That the second Part of the Return was grounded upon an Order of Parliament, which was determined with the Parliament, and that that Court was to take Notice when a Parliament was sitting, and when discontinued, and which were Orders of Parliament, and which were Acts; and it was ever the Opinion of the Parliament themselves, that upon a Dissolution all their Committees and Orders cease: That they did not reverse the Order of Parliament, it was reversed by their Dissolution, and there was no visible Way how the Prisoner should be reliev'd but in that Court: Intervals of Parliament might be as long as they were in the Reigns of King *James* and King *Charles*; and if an Order of Parliament should be binding on a Dissolution, where was the Liberty of the Subject? And upon the whole, the Chief Justice and the whole Court resolved that the Prisoner ought to be discharged. And a Rule was made accordingly.

The Court discharge the Prisoner.

The

*The Tryal of Dr. JOHN PORDAGE, Rec-
tor of Bradfield, before the Commissioners
of Berks for ejecting scandalous and in-
sufficient Ministers, 1654.*

Page 753.

DR. Pordage attended, according to Summons, at the Bear in Speenhamland by Newbury, on the 5th of October, and was called before the Commissioners; but his two Friends (that he brought with him) being kept out, and the Doors shut, he demanded if they were a publick Court of Justice; and said, if they were, he conceived the Doors ought to be open for all Persons, as was customary with other Committees and Courts of Judicature; whereupon the Doors were open'd, and the People came in; but *Wightwick* (a Commissioner) declared he should fare the worse for it.

Then the Articles were read against him, and are as follow, viz.

Page 754.

1. That the fiery Deity of Christ mingles and mixes itself with our Flesh.

The first nine
Articles exhib-
ited against
him.

2. That the imputative Righteousness of Christ is a sapless Righteousness.

3. That the Discoveries of the Sinfulness of Sin, the Terrors of the Law, the Death of Christ, the free Grace of God, are fleshly and flashy Discoveries.

4. That the Liberty and Freedom spoken of, purchas'd by the Blood of Christ, and apply'd by the clinging and cleaving of the Soul to, is not a Liberty or Freedom from the Guilt of Sin, the Curse of the Law, the Wrath of God; but the fiery Deity of Christ in the Centre of our Souls.

5. That by Male and Female, *Gen. 1.* we are to understand by Male the Deity, by the Female the Humanity; and that these two became one Flesh. These Things were deliver'd without any Limitation whatsoever.

6. That Gifts and Graces of the Spirit are but Flesh.

7. That Christ is a Type, and but a Type.

8. That Christ is not God.

9. That

L 2

Pettipiece,
Chairman.

The Doctor
objects, that he
had already
been try'd and
acquitted of
this Charge.

Which does not
avail him.

Page 755.

The Doctor's
Answer to the
first Articles.

9. That Christ is not *Jehovah*.

The Articles being read, the Chairman demanded his Answer.

Mr. *Pordage* said, That he had been already try'd before, and acquitted by the Committee of plunder'd Ministers, who had full Power to do it, and desir'd the Liberty of a Felon, who after Tryal and Acquittal could not be question'd again for the same Fact; but if they had any new Matter to object, he was ready and willing to answer it.

Mr. *Hewes* (an assistant Minister) replied, A Felon might be acquitted at one Assizes, and hang'd at the next, for the same Fact. Then the Commissioners declar'd they had Power to take Cognizance of the Articles, notwithstanding his Discharge in another Court; and accordingly made an Order of Court that *Pordage* should attend that Day Fortnight at the same Place, to give in his Answer.

On the 19th *Pordage* offer'd his former Discharge, instead of an Answer, which was read, copy'd, and return'd; but the Commissioners over-rul'd his Discharge, and order'd him to put in his Answer. He then deliver'd a Paper, containing Reasons for his not being try'd before them, and an Answer to the Charge; the Substance of which follows, viz.

1. That none of the Offences, mention'd in the Articles, are comprehended in the Act made the 9th of *August*, 1650, against several atheistical Opinions, &c. unless the Meaning be rested beyond the literal Sense.

2. That the Words, mention'd in the Articles, were utter'd a Year before the said Act was made, and that no Person is to be punish'd by that Act, unless he be prosecuted within six Months after the Offence committed.

3. That they could not take Cognizance of these Matters, he having already been try'd for them before the Commissioners of *Berks*, who were authorized by Parliament to put out, and put in Ministers in this County.

4. He had been likewise heard, dismiss'd and acquitted by the Committee of plunder'd Ministers, impower'd also by Act of Parliament, and that it was contrary to that fundamental Maxim of *Magna Charta*.

Charta, Nemo bis punietur pro uno delicto; and to the 6th Article of the Instrument of Government, That the Laws shall not be alter'd but by Consent of Parliament, &c.

That however he now deliver'd his Answer to the Articles, for their Satisfaction, tho' he did not think them under the Cognizance of the Act.

1. He acknowledges the Expression [That Christ is not God] but said the following Words were added [*The Father, or Not Jehovah*] and then it was not blasphemous.

A more particular Answer to the first nine Articles.

2. That if to the Words [*Christ's imputative Righteousness would prove a sapless Righteousness*] was added, as in Truth they were [to those who had not sufficient Grace to extinguish their Lusts and Corruptions] it would be no Crime. And that the Act condemns those only who shall avowedly maintain such execrable Opinions, which he never did; for he only spoke it in an extempory Dispute, and always held and preach'd that Christ was God and *Jehovah*, and believ'd Christ's Righteousness, rightly applied, to be the Righteousness of Justification.

Page 756.

3. That for the Explanation of the fiery Nature of Christ's Deity, must be consider'd Scripture-Metaphors, as, *Heb. 12. 29. [Our God is a consuming Fire]* and again, [*Christ shall come in flaming Fire*] which must either be the Fire of his divine Love to consume our Corruptions, or of his divine Wrath to destroy Sin and Sinners.

4. That the fiery Deity, &c. does not mix with the fleshly Part of the Soul, or the outward elementary Flesh of the Body, but with the pure regenerated Part of the Soul; and thus, according to the Apostle's Phrase [*We are made Partakers of the Divine Nature.*]

5. That Christ's Life and Conversation was a [Type] or Pattern, for Christians to regulate their Lives by; but denied saying he was [but a Type.]

6. That the common [Gifts and Graces of the Spirit are but fleshly] and weak in Point of Justification. And that he had before explain'd himself in this Manner, as their own Witnesses had confess'd on their former Examination.

Subscrib'd John Pordage.

L 3

The

The Commissioners offering Mr. *Pordage* a Summons to fetch his Witnesses, in order to his Defence, he replied he thought his Discharge and Answer sufficient; and hop'd (as he was now ready to produce all their Depositions, deliver'd on Oath to the Committee of plunder'd Ministers) they would not give him the Trouble and Charge of traversing it again *viva voce*.

Page 757.

Which was rejected, and an Order made for his Appearance (and a Summons for his Witnesses to attend) that Day fortnight at that Place, to answer some additional Articles now exhibited against him by *Joseph Cook*, to prove his Ignorance and Insufficiency for the Ministry, and are as follow.

A second Charge against the Doctor.

1. That Mrs. *Lewyn* sending for Dr. *Pordage's* Mother to be her Midwife, he hinder'd her going, and said they would not be guilty of such a Beast-like Life, meaning Mrs. *Lewyn* having Children by her Husband.

2. That he blam'd Mrs. *Lewyn* for, and urg'd the Unlawfulness of having Children by her Husband.

3. That he maintain'd and seem'd to prove from Scripture, that *Adam* was made Male and Female, and (if he had not fallen) had brought forth Children himself.

4. That he ask'd Mr. *Lewyn* if he would not be afraid to see his own Shape, intimating that *Pordage* himself had us'd to see his.

5. That he had for some Weeks in his House one *Everard* a reputed Conjurer; and one *Tawney*, who stil'd himself King of the Jews, and held dangerous Opinions, as that there is no Hell, &c.

These Articles being read, Mr. *Pordage* desir'd that the Matter of the other Articles might be first finish'd, but this was refus'd.

November 2. The Commissioners being set, demanded his Answer to the second Charge; he answer'd 'twas ready; but desir'd (to prevent Confusion) they would hear his Witnesses to the first Charge; but they would hear nothing before they had his Answer, which he then deliver'd, and is as follows:

Page 758.
The Doctor's Answer to the second Charge.

That Ignorance and Insufficiency are very distinct from Scandal and Heresy; and that certainly

ly the Protector and Council who made the Ordinance, did not design to confound them under the same Denomination, that several learned Ministers differ in their Opinions, yet are not thought ignorant or insufficient for the Ministry; and if these Articles could be prov'd, they must be refer'd either to Scandal or Heresy; unless the boundless Liberty and Wills of the Judges resolve to deem that ignorant and insufficient, which is not so in itself.

That he should give no Answer to the first four Articles, 'till he saw them prov'd by sufficient Witnesses.

And as to *Everard*, mention'd in the fifth Article, he said he desir'd to be employ'd in Harvest-work, and he entertain'd him as a Workman for almost three Weeks; but never heard or suspected that *Everard* was a Conjurer 'till after he was gone; that then indeed he (*Pordage*) believ'd it, and had some Thoughts to prosecute him; but considering his Surmises were not sufficient Grounds of Conviction, he wav'd it.

That his entertaining *Tawney* was consonant to the Commands of Scripture, viz. to feed the Hungry, cloath the Naked, and lodge the Stranger; and that 'tis said in the 37th Article of Government, that all who profess Faith in God through Christ Jesus, tho' differing in Doctrine, &c. shall be protected; that then surely they might be fed, cloath'd and entertain'd. That he never receiv'd any Drunkard or prophane Person, but those only who came under the Appearance of Godliness. That he was commanded to prove all Things, and hold fast that which is good; and as many false Spirits are gone out into the World, how should he prove them but by Conversation, Christian Discourse and sound Doctrine?

John Pordage.

The Answer being read, the Commissioners then proceeded to the Proof of the first Articles; and Mr. *Tickle* was call'd. Mr. *Pordage* desir'd he might cross-examine him in open Court, which was refus'd, and he was order'd to write his Interrogatories,

and they should be propos'd to the Witness and answer'd in private, in the Absence of *Pordage*. And the Commissioners afterwards (tho' press'd by *Pordage*) refus'd to produce *Tickle's* Answer to his Interrogatories; and instead of examining the Doctor's Witnesses, *Mr. Fowler*, an assistant Minister, not waiting the Clerk's Leisure, took the Paper from him, and read a new Charge against him, which, with his Answers, follow in the next Day's Proceedings, to which the Reader is refer'd.

Page 742.

After these Additional Articles were read, *Mr. Fowler* read the Examination of one *Sewer*, who depos'd that *Dr. Pordage* affirm'd Marriage to be a very wicked thing, and contrary to the Word of God; and that the Deponent asking if his Wife should die, what he should have done; the Doctor replied, *Would you be so wicked as to marry?* After which *Mr. Fowler* desir'd the Audience to take Notice that Doctor *Pordage* was guilty of Atheism, Devilism, and of a loose Life and Conversation; and that he would prove the Articles charg'd against him, or be counted a Slanderer; and then suddenly departed the Court.

Mr. Pordage again urg'd, that his Witnesses might be heard, in reference to the first Articles, for that they were now ready, according to their own Appointment; and (if refus'd) he must be at further Charge and Trouble to produce them another time; but this was denied, and two Witnesses call'd to prove the second Charge; and notwithstanding the Doctor desir'd their Examination might, like his Accusation, be in open Court; or, at least, that he might be present; it was deny'd, and the Court having caus'd two of the Witnesses to the second Charge to be examin'd privately, they adjourn'd, having made an Order for him to attend again at the *Bear in Reading* on the 22d Instant.

November. 22. *Dr. Pordage* was again call'd and ask'd for his Answer; he desir'd leave to read the Articles with his Answer to each, as he went along, which was agreed to.

The

The Articles and Answer follow.

Article 1. That the Righteousness of Christ was a poor vain sapless Righteousness.

Page 763.
A third Charge
with the Doc-
tor's Answer to
it.

Answer. This was in my former Charge; and I deny that I ever spoke the Words, without some Limitation.

Art. 2. That Jesus Christ was not perfect (quoting that Place of Scripture to confirm it) *My God, my God, why hast thou, &c.*

Ans. I utter'd these Words only by way of Relation, as I heard them in a Sermon of Mr. Erbery's at *Somerset-house*.

Art. 3. That the Blood of Christ was not meritorious of any Man's Salvation.

Ans. I deny that I ever said the Words, for my Judgment hath always been the contrary.

Art. 4. That it was a poor thing to live upon the Blood of Christ; and fetching it over-again in a contemptuous manner; *Pisb*, said he, *thou art a Babe, thou knowest nothing; to live upon the Blood of Christ is a poor thing.*

Ans. Mrs. Grip complaining to me that Mr. Fowler had slander'd her, by reporting she then liv'd in Adultery; and saying she was an elect Person, for that Christ died for her, and justified her by his Blood from all Guilt of Sin; I said 'twas a poor thing to live and look so much on the Blood of Christ, except she had the Nature and the Spirit of Christ. And she still crying she liv'd on the Blood of Christ, I told her (but not contemptuously) 'twas a poor thing to be exalted with Notions of the Blood of Christ without Sanctification, and those holy Graces which flow from Christ's Nature.

Page 764.

Art. 5. That one speaking to him of the glorious Persons of the Trinity, he reply'd, *Pisb*, *there is no such thing as Persons in Trinity.*

Ans. I profess and believe that there are three Persons distinct from each other, yet not so as to prejudice the Unity in Essence, and so believe the Unity as not to confound the Trinity of Persons. I acknowledge to have told Mrs. Grip, that there was no such Expression as Persons in Trinity in the Scripture, the Word Person being a School-term,

term, difficult for common Capacities to apprehend; but never spoke it to prejudice the true Notion.

Art. 6. That it was a Weakness to be troubled for Sin: And *Art.* 7. That he might say any thing to the Men of the World.

Ans. To the best of my Remembrance, I never utter'd, and am certain never held any such Maxims, and believe no one dare assert it on Oath.

Art. 8. That he (being tax'd for keeping carnal Company with a Woman in *London*) asserted, that he knew nothing to the contrary, but that a Man might company with more than one Woman.

Ans. Mrs. *Grip* saying I was tax'd with keeping Company, &c. I solemnly protested the contrary; and believing she was tainted with some Notions of Rantism, I said, there are some that affirm they know nothing to the contrary, but that a Man may, &c. (as above) but she seem'd not to approve of any such thing; and I believe Mrs. *Grip* dare not swear I maintain'd or offer'd to prove it.

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Art. 9. That he hath frequent and familiar Converse with Angels.

Ans. I don't see how this Article, as mention'd (without expressing whether the Communion be visible or invisible) can touch me.

Art. 10, 11, 12, 13. Concerning a Vision of a Dragon, and the Apparition of Spirits.

Ans. I believe none will swear it as express'd in the Articles, neither will I confess any particular Apparitions 'till they be prov'd, but acknowledge many wonderful Apparitions were, about four Years since, seen in my House; and what can this hurt me? Was not *Job* terrified thro' Visions? *chap.* 7. v. 14. Did not *Zachariah* (*Rev.* 3.) see Satan stand at the right Hand of *Josua*? Did not *John* (v. 12.) behold a red Dragon in a Vision? Was not Christ himself tempted of the Devil by Voice and Visions? *Matt.* 4. 6, 8. Now the Servant is not greater than his Lord (*John* 15, 20.) therefore not exempted from Attempts of the Devil; neither is *Bradfield*, or any other Place, exempted when God permits; and how can this render me Scandalous, Ignorant,

Ignorant, or Insufficient? it rather shews God hath blest me with Faith, and enabled me to overcome these Tryals by Fasting and Prayer. Could it be prov'd I us'd Magick Art, I ought to be punish'd, but it's hard to be prosecuted for the Devil's Malice.

Art. 14. That Mrs. Margaret Pendar doth think she was bewitch'd by them of Bradfield.

Ans. It's hard to be impeach'd for the Thoughts of a discompos'd Maid; and I do not believe she will say, much less swear it, for before she had her Visions I never saw her.

Articles of one Francis Knight of Wallingford produc'd against him.

Art. 1. That some of Blewbery, who spake against Marriage, said they came then from his House.

Ans. Their having been at my House does not so much as consequentially prove me guilty.

Art. 2. That his Chamber hath been fill'd with Spirits.

Ans. I suppose no one will swear to this Article, since Spirits being immaterial cannot fill a Room.

Art. 3. That he preach'd that Water-baptism was not an Ordinance of Jesus Christ.

Ans. I affirm'd it could not be prov'd so by way of Eminency from *Matt.* 28. 19. for that by Baptism was meant the Baptism of the Spirit, which was administer'd to all Converts by the Disciples, but denied not Water-baptism to be a Gospel Ordinance.

Art. 4. That about 1653, he was commanded by his Angel, or from Heaven, to give off Preaching, and to take no more Tythes; but that since he had a Dispensation.

Ans. I believe no one will attest this on Oath; and I think that Answer enough.

Art. 5. That in 1654 he was taken up into Heaven.

Ans. 'Tis an idle Dream, and can't be prov'd.

Art. 6. That he curs'd the People of Bradfield in his Pulpit, and their Posterity for ever.

Ans. 'Twas prov'd before the Committee of plunder'd Ministers by three Witnesses, that I did not curse

Page 766:
A fourth Charge
against the
Doctor, and his
Answer to it.

The TRYAL of

curse the People of *Bradfield*, as mention'd in the Article.

Art. 7. Concerning the little Horn, mention'd *Daniel 7*, to be Christ.

Ans. I said in the Mystery, in regard of its Power, we will apply to the Power of Christ in a Christian, who is often resembled to the Horn of *David*, and the Horn of Salvation.

Art. 8. Concerning Goodwife *Pocock's* singing Hymns and spiritual Songs.

Ans. She thinks it a special Gift of God; but it does not directly concern me.

Art. 9. Concerning the same Person's coming to Colonel *Evelyn's*, and saying she had a Word from God, viz. *Have nothing to do with that Just Man.*

Ans. She owns the Words, thinks me a just Man, and believes Colonel *Evelyn* will one Day know 'twas good Counsel.

Art. 10. Concerning Mr. *Snelling* and his Wife coming to his House, &c.

Ans. There's no Truth in it.

Art. 11 and 12. Concerning the sending his Man *Bolt* in an uncivil manner for Mr. *Forster*, with his speaking of strange things there to be seen; and of his telling Mr. *Forster* he should see very wonderful things, &c.

Ans. Mr. *Forster* dares not swear to the Particulars; and being of so little Consequence, it might have been omitted; besides, *Bolt* asserted on Oath before the Committee of plunder'd Ministers, that 'twas not I but his Mistress sent him for Mr. *Forster* and his Wife to come to my House.

Art. 13. Concerning Goodwife *Pocock's* coming to Mr. *Forster's*, and saying the Doctor had fought with and overcome an evil Spirit; and that the Family had been strangely acted, the Power taking some of them in one part, some in another; and that they spake glorious Things.

Ans. Mary *Pocock* depos'd upon Oath before the aforementioned Committee, she saw no Spirits; and I was acquitted by them, because they could make nothing of it.

Art.

Art. 14. That. Mrs. *Flavel* was in a Trance, and in it saw the Philosopher's Stone, which she knew to be the Divinity in the Humanity.

Ans. I admire this should be charg'd to prove me insufficient, &c. when it's affirm'd of another, and does not touch me.

Art. 15. Touching *Saywood's* Depositions of the Birth of a Child, and one being in Travail.

Ans. Three Witneses affirm'd on Oath, before the said Committee, that there was no such thing, nor any Cry, but of People at Prayer.

Art. 16. That in his House the new *Jerusalem* hath been seen to come down from Heaven, and that in it was a Globe, in which Globe was Eternity, and in that Eternity all the Saints.

Ans. I believe none dare attest they heard this spoken by any of my Family.

Art. 17. That in his House God hath been seen Face to Face, &c.

Ans. Before I speak to this, I would see who dare swear it (as it's stated) or what Proofs brought.

Articles exhibited against him by some of his Parishoners of *Bradfield*.

Art. 1. That Dr. *Pordage*, about eight Years since, brought Mrs. *Flavel* behind him to one Good-man *Loader's* near *Hounslow*; and ask'd if she (being sick) might have Entertainment; but never own'd she was with Child.

Ans. 'Tis nine Years ago; and I did not say she was sick; neither did she deny her being with Child.

Art. 2. That in a short time she fell in Travail, and had then no Husband, as the World knew of.

Ans. 'Twas four or five Months after her being there, and she did then own to the People, that she had had a second Husband; and when she has occasion, can produce sufficient Witness of it; tho' she went not by his Name, because of a Law Suit then depending; and (having conceal'd it) she has thought fit to be call'd by the first Husband's Name ever since.

Art.

Page 761.

Page 767.

A fifth Charge
by his Parishoners with
his Answer.

The TRIAL of

Art. 3. That he christen'd the Child *Hannah*; and came alone often to visit her.

Ans. Having urgent Business at *London* in Term-time, I call'd three times in three Quarters of a Year, and no more.

Page 761.

Page 762.

Art. 4. That the Child being put to Nurse, the Doctor mov'd Mrs *Flavel* to *Kensington*, and paid *Loader* for her being at his House; and that some time after the Nurse's Husband writ to the Doctor that he was twenty Weeks Pay behind; on which he was paid and the Child taken away.

Ans. I knew not when she remov'd; neither did I ever agree with *Loader*, or with the Nurse or her Husband; or pay either of them a Penny; nor was any such Letter writ, as the Nurse and her Husband can testify.

Art. 5. That a little after Mrs. *Flavel* and the Child came into the Doctor's Family; and that Mrs. *Flavel* being often ask'd whose Child it was, always answer'd 'twas a dear Friend of her's, but never named whose.

To this Article the Doctor says only, *It is false.*

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Art. 6. That they chang'd all their Names, the Doctor was call'd *Abrabam*, his Wife *Deborah*, the Child *Hannah* was call'd *Ruth*, old Goodwife *Pocock* *Rabab*, &c.

Ans. We own and subscribe our Names as my Answers testify; and if we do call each other by Scripture Names amongst ourselves, I suppose it no Crime.

Art. 7. That he is extremely covetous, taking five Shillings at a time to marry one.

Ans. Mr. *Fowler* (my Accuser) has, for the same thing, oftner taken ten than five.

Art. 8. That his Preaching doth not tend to Edification.

Ans. Christ's Ministry was not ineffectual, because some of the Audience did not believe; and there are many in the neighbouring Parishes who have been edified, refresh'd and converted by my Preaching.

Art. 9. That he is very ignorant and insufficient for the Work of the Ministry.

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Ans. I believe the Exhibitors of this Article are ignorant and insufficient to judge of it, and hope these my Judges will not make their own Will their Rule, but act according to Reason.

Tho' I think my Answers sufficient to clear me from any Guilt, in the Sight of judicious Men; yet as most of the Things of any Moment are pretended to be said and done before the Year 1651, I crave the Benefit of the general Pardon.

As for what he is accus'd of before 1651, he pleads the general Pardon.

John Pordage.

Then the Commissioners adjourn'd to the 30th of November, and order'd Dr. Pordage to attend them that Day at the Bear in Speenhamland; but the Dr. falling sick, (of which they had Notice) another Summons was sent, that he should attend the 7th of December next, at the Bear in Reading, with his Witnesses.

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Here follows the Substance of the Depositions given against and for him, on the first Charge, together with some Remarks, Observations and Answers of the Dr. himself.

1. Mr. Tickle, Minister of Abingdon, depos'd, That he heard Dr. Pordage deliver in the Pulpit at *Ilfley* [That the fiery Deity of Christ mingleth with our Flesh.] And said further, That on the Deponent's charging him with Blasphemy, the Dr. said, [he meant not with our Corruption, but with our Flesh] holding his Hand over the Pulpit, said again, [he did not mean our Flesh, but with the Soul of Christ] and us'd no Limitation.

The Depositions as to the first Charge.

Mr. Francis Pordage, Minister, Mrs. Mary Pocock, and Robert Bolt, offer'd to depose, That the Dr. explain'd himself before the Committee of plunder'd Ministers in the same Manner as in his former Answer, as to this Article; but they not being present at the Sermon, their Evidence was rejected.

2. Mr. Tickle depos'd, That the Dr. deliver'd in his said Sermon at *Ilfley*, [that the imputative Righteousness of Christ is a sapless Righteousness] without any Exception or Limitation.

Page 771.

Roger Stephens depos'd, He was at the Sermon, and heard those Words deliver'd as an entire Sentence, and only so; and that the Dr. said also, [You are

not

not to look to this, but to the fiery Deity burning in the Centre of our Souls, consuming and destroying Sin there] but that these did not immediately follow the other Words, but were further off in the Sermon.

Mary Pocock, (Witness for the Dr.) depos'd, That she was at *Hfley* and heard the Sermon, in which the following Words were deliver'd together, to make up one Sentence, viz. *That the Righteousness of Christ was sapless, except the fiery Deity of Christ be in the Centre of our Souls, burning up our Lusts and Corruptions.*

Then the Dr. offer'd three Witnesses to testify his Explanation of this Article before the Committee of plunder'd Ministers; but they were rejected. The Dr. next offer'd to produce several of his constant Hearers to testify that the Scope of his Ministry was contrary to this Charge, and call'd *Mary Pocock*, who was refus'd, as being one of his own Tribe. Then *Richard Higgins* was call'd and sworn,

Who depos'd, That the Doctor's usual Preaching was not against the due Application, but Misapplication of Christ's Righteousness; and being ask'd what he had heard of the imputative Righteousness, he said he had forgot; but had a Note to refresh his Memory, which he produc'd, and acknowledg'd he had from the Doctor. For which the Doctor was severely censur'd by the Court.

Here Mr. *Fowler* affirm'd, That the Deponent denied the Bible to be the Word of God; to which the Deponent answer'd, That he never denied it to be the written Word, but had said it was not the essential Word; and the Minister of his Parish being present, acknowledg'd he had before given the same Distinction to him, and that he believ'd the Deponent to be an honest sober Christian.

The Doctor had three other Witnesses, which he propos'd to make use of for Proof of the Scope of his Doctrine; but the Court thought it merely dilatory, and refus'd to hear them.

3. Mr. *Tickle* depos'd, That the Doctor said, [That the Discoveries of the Sinfulness of Sin, the Terrors of the Law, &c. were but flashy Discoveries.]

To this the Doctor offer'd no Witness, only answer'd, That he thought them but Preparatory to the more powerful Workings of God, so but weak in Comparison of the more full Operations of God upon the Soul.

4. Mr. Tickle depos'd, That the Charge in this Article, viz. [That the Liberty, &c.] was fully deliver'd by the Doctor in the express Words:

Dr. Pordage affirm'd he express'd himself thus: That the aforementioned Freedom did not only consist in Freedom from the Guilt of Sin, &c. but also in the Enjoyment of the Spirit of Christ in the Centre of the Soul, there purifying our Natures, mortifying our Lusts, and restoring us into the Image of God:

5. Mr. Tickle depos'd, That the Doctor deliver'd these Words, viz. [That by Male and Female, &c.] as his own Judgment, as near as the Deponent can remember:

The Doctor affirm'd that he urg'd this as the Judgment of a learned Rabbi, viz. That by Male and Female might be shadow'd forth the Deity and pure Humanity, which by Union become one, the Male representing the Deity, and the Female pure Humanity, &c.

6. Mr. Tickle depos'd, That Dr. Pordage being in Discourse with Mr. Pendarvis, said, without any Manner of Limitation [That the Gifts and Graces of the Spirit are but Flesh.]

The Doctor here offer'd an Examination of Mr. Pendarvis on Oath to be read; wherein he depos'd, That the Dr. explain'd himself in saying [by Flesh he meant weak in Point of Trust for eternal Salvation] but it was denied being read.

7. Mr. Tickle depos'd, That in the aforesaid Discourse the Doctor said, [That Christ is a Type, and but a Type] and endeavour'd to prove it out of Peter, where he is call'd *τὸν υἱόν*.

Roger Stephens being sworn, depos'd, That the Doctor said Christ was but a Type; and went to prove it by 1 Pet. 2:

Then the Doctor again offer'd Mr. Pendarvis's Examination, in which he depos'd, That the Doctor (after saying Christ was but a Type) presently wa-

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ved the Word [but] and only affirm'd [that he was a Type.] But this was not allow'd as Evidence. *Mary Pocock* was call'd,

Who being sworn, depos'd, That she heard the Dr. say the Words, and that he prov'd it out of *Peter*, and that the Doctor likewise said he would not stand to the Word [but.]

John Pordage, his Son, was sworn, and depos'd, That the Doctor said, the Expression [but] was *Lapsus lingue*.

Page 775.

To the eighth and ninth Mr. *Tickle* depos'd, That he heard Dr. *Pordage* maintain and defend, as his own avow'd Judgment [that Christ was not God, and that he was not *Jehovah*] and that no such Expression was us'd, viz. [the Father] as mention'd in the Doctor's Answer.

Mr. *Traptam*, one of the Commissioners likewise depos'd, That the Doctor denied [Christ to be God] And that Mr. *Elagrove* saying, If he denies that, we must take further Course with him; the Doctor replied, [He is not *Jehovah*] but being confuted by Mr. *Tickle*, the Doctor then said, [He is not God the Father.]

Page 776.

Then the Doctor produc'd Mr. *Francis Pordage* and *Mary Pocock*, who were sworn.

Mr. *Francis Pordage* depos'd, That he heard the Dispute betwixt Mr. *Tickle* and the Doctor, wherein the Doctor denied, &c. and put Mr. *Tickle* on the Proof of it; which, when Mr. *Tickle* had done, the Doctor replied, [He is not God the Father] and depos'd further, That he heard him clear himself in a Sermon before the Committee at *Reading* [concerning the Trinity, and that Christ was not God] and asserted the Discourse then deliver'd to be his avow'd Judgment.

Mary Pocock depos'd, That after Mr. *Tickle* had brought Proofs to confirm his aforesaid Assertion, That Dr. *Pordage* said, [He is not God the Father] but that she never heard him deny that [he was God the Son.]

Page 777.

Then the Doctor offer'd two Witnesses to prove that he express'd himself in the said Sermon after this Manner, viz. [That *Jehovah* taken last, including the Trinity of Persons, they are all *Jehovah*; but

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but taken *strict* for God the Father, Christ is not *Jehovah*; and that the Doctor protested that the Thought of denying the Deity of Christ never enter'd his Soul] and that he was thereon clear'd by the Vote of the whole Committee: But the Commissioners refus'd them; saying, They had nothing to do with the Transactions of other Committees, but would proceed on the Proofs of present Witnesses.

The Doctor then urg'd that they would hear the Evidence of four Witnesses then present, relating to the Tenor and Scope of his Doctrine since that Dispute; but the Commissioners said they were in haste, and that such Testimony was to no Purpose, therefore rejected it.

To the Proof of the second Charge exhibited by *Joseph Cook*, the Commissioners set up *Mr. John Lewyn*, Minister of *Hampstead*, *Norris*, and *Mrs. Lewyn* his Wife; but neither of them could depose any Thing relating to the first Article.

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Proof of the second Charge.

To the second Article *Mrs. Lewyn* depos'd, That the Doctor told her, when she had two Children, That since she had one for her Husband; and another for her self, she had enough; and that she answering (as it shall please God) the Doctor replied, [Pish it is as your selves will] but that he never advis'd her to live from her Husband.

To the third Article *Mr. Lewyn* depos'd; That (in a Discourse of Religion) the Doctor quoted *Genesis*, and said [He made them Male and Female] but whether he meant *Adam* singly, or had any mental Reservation, the Deponent knew not.

To the fourth Article *Mr. Lewyn* depos'd, That Doctor *Pordage* and he having Discourse in *London*, the Doctor ask'd the Deponent if it would not be terrible to see Apparitions; but did not mention any Thing of seeing any himself.

To the fifth Article there was no Evidence given, therefore I shall only refer the Reader to the Doctor's Answer, before inserted, and mention his general Answer to the other Articles, *viz.*

That he prefer'd Virginity to Matrimony, a single Life to a married State, and said (after Marriage, *Cor. 7. 38.*) People might abstain from the Pleasures

tures of it by Consent, and live as single, tho' in an united Form : That it was his Opinion and Practice so to do, according to *Mat. 19. 12.* and that he believ'd it requisite to use Prayer and Mortification for obtaining the Gift of Continency, before they involv'd themselves in the Entanglements of the World; and that it would be happy if those who did marry would consider and distinguish betwixt adulterous and bestial Marriages, and those that are pure and holy, and by that Means lawful and honourable.

The Commissioners then called for Lights to proceed in examining Witnesses to the third Charge; but the Doctor objected it was late, and he had several other Witnesses to produce to the former Charge; but the Commissioners persisted in it, and said they would make an End that Night : Then the Doctor urg'd that he had not din'd, was weak for want of Refreshment, and desir'd it might be put off till Morning; but they refus'd, (only permitting him to withdraw for a short Time.) The Doctor fell sick, and went to Bed, which oblig'd them to stay till Morning.

[The Proofs of the third Charge.]

Proofs of the third Charge.

Page 780.

Mr. *Fowler* depos'd, That Mr. *Daniel Blagrove* jun. told him, That he the said *Blagrove* heard Dr. *Pordage* say [that Christ was not perfect.]

The Doctor offer'd three Witnesses to testify, that at his coming from *London* they heard him relate this as spoken by Mr. *Erbery*, as mention'd in his Answer to this Article; but it was thought impertinent by the Commissioners, and so rejected.

Mr. *Fowler* depos'd, That he asking Mr. *Daniel Blagrove* jun. if he heard Dr. *Pordage* speak the Words express'd in the third Article, *Blagrove* answer'd, He heard him speak to that Purpose.

The Doctor objected that this was only hearsay and he had already given in his Answer; but as further Testimony that he never held such Principles, desir'd they would hear some Witnesses touching the Scope of his Ministry as to this Particular but the Commissioners judg'd it not material, and would not hear them.

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Mrs. *Grip* depos'd, That about four Years since she heard the Doctor say the very Words mention'd in the fourth Article.

The Doctor urg'd, That besides the Answer he had before given in, that there was but one Witness to the Proof of this Article, and that he had several Witnesses to testify that she was a Woman of a very indifferent Character, and that in his Sermons he had often express'd that the Blood of Christ was of a cleansing, redeeming, and justifying Nature; but the Commissioners refus'd to hear his Witnesses.

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Mrs. *Grip* depos'd, That about two or three Years since the Doctor utter'd those very Words in the fifth Article, without any Limitation or Explanation whatsoever.

The Doctor here likewise refers to his Answer, and objects that she's but a single Witness, and desires he may have the Liberty to produce Witnesses that the Scope of his Doctrine has been directly contrary to what he is here charged with; but it was denied.

Mr. *Woodbridge*, Minister of *Newbury*, depos'd, That Mr. *Twiss* of *Dorchester* told him, that Dr. *Pordage* maintain'd to him [That he was no Christian that could not commit the greatest Sin; and not be troubled for it.]

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The Doctor observed this was but hearsay, and assur'd the Court that he knew not, nor ever saw Mr. *Twiss*, and that he never held any such Opinion, nor ever utter'd any such Expression, it being diametrically opposite to his Principles.

To the Proof of the 7th Article there was no Witness produc'd.

Mrs. *Grip* depos'd, That about three or four Years ago the Doctor spoke Words of the like Import as those mention'd in the 8th Article, but cannot remember the express Words, and that he spake it as his own Judgment, and not as that of another Man's.

The Doctor carp'd at the Validity of her Evidence, because she could not remember the express Words, refer'd to his Answer, and said it was the Principle of the Ranters, and contrary to his Sentiments.

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Mr. Fowler depos'd, That Mr. *Daniel Blagrove* Sen. and Mr. *Daniel Blagrove* Jun. had both told this Deponent that they were able to say much in Relation to [the Doctor's Converse with Angels] and that Mr. *Blagrove*, the elder, said, He believ'd the Doctor would not deny it before the Commissioners, and that (they having then been talking of Mrs. *Pindar's* Visions, seen with a bodily Eye) the Deponent did believe Mr. *Blagrove* meant [a visible Converse with Angels.] And Mr. *Fowler* further depos'd, That he had been credibly inform'd that the Doctor had seen the Vision of Mr. *Blagrove* Sen. being a bright Vision.

The Doctor acknowledg'd [he had daily Communion and Converse (but did not say whether visible, or invisible) with Angels;] and said that he knew no Scripture that spoke against it, and why might not God comfort some precious Saints by affording such a heavenly Converse? and that if Mr. *Fowler* had no Sense of it, he ought not rashly to judge those who had.

Mrs. *Grip* depos'd, That the Doctor told her there were many Spirits hover'd and kept a Noise about his Window, and that the Doctor said he told the Company that but one should come in at a Time, and that a Dragon with a long Tail, great Eyes and Fangs, came in and spit Fire at him, but that his Angel, in the Doctor's own Shape, Clothes, Band and Cuffs, stood by and protected him. She further depos'd, That the Doctor likewise told her, that Mrs. *Pordage* and Mrs. *Flavel* had likewise their Angels standing by them, and that the Children saw the Spirits, and (not being afraid after they had fasted and pray'd) said, Look there Father.

The Doctor acknowledg'd before the Commissioners, that he and some of his Family had seen many dreadful Apparitions in his House, as a Dragon with a long Tail and great Teeth, and several others both of good and bad Angels, but denied the Appearance of his own Angel in his Clothes, &c. or in any other visible Shape; but that they had ceas'd coming for about four Years past.

Mrs. *Grip's* Daughter likewise depos'd, that she heard the Doctor give the same Relation of the Dragon,

Dragon, and his own Angel in his Cuffs, &c. and that he said the Spirits came into his Chamber, drew the Curtains and look'd on him, which at first affrighted them, but after being us'd to them they did not mind it; and several other things which the Deponent could not then remember.

Elizabeth Baynwell, late Servant to the Doctor, depos'd, that she had seen something light like a Star in the red Chamber at the Doctor's House; that 'twas by the Leg of the Bed, and no other Light in the Room; and that she had several times heard Musick in the Kitchen, and in her Mistress's Closet; and tho' she believ'd the Musick to be near her, yet never saw any Instruments or Musicians.

She further depos'd, That Mrs. Flavel usually lay in the Doctor's Bed-Chamber, during the time of the Deponent's Service, being about a Year and a Quarter; but said she never liv'd in such a pious Family, and thought she never should again.

The Doctor said, that from these Apparitions (which had excited him to more frequent Fasting and Prayer) his Enemies had scandaliz'd him with the Name of Conjuror and Sorcerer; and that Mr. Ford, in his Sermon at Reading Assizes, had utter'd these Words, viz. "That there is one of the most eminent Church-Livings in the County possess'd by a Blasphemer; and in whose House the Devil is as familiar as any of the Family; and shall the Horns of these Beasts never be par'd off by the Civil Magistrate?"

Page 785.

Mr. Fowler was again sworn, and depos'd, that Mrs. Pindar told him (the Deponent) that she heard a great Noise of Drums and Trumpets at Mr. Blaggrave's House; and that Doctor Pordage told her 'twas an Alarm to the spiritual War; and that one Night the Vision of young Mr. Blaggrave came to her Bed-side, whose Hand felt cold; and that Doctor Pordage said 'twas a sign he began to be cold to Vanity; and that she asking the Doctor the meaning of these Visions, he replied, *We don't use to reveal one another's Visions.*

Hearsay admitted as Evidence against the Doctor.

Mrs. Blaggrave, on behalf of the Doctor, depos'd, that she never heard Mrs. Pindar say that she was be-

bewitch'd by them of *Bradfield*; but that she said her Visions were from God; and that she (*Pindar*) never spake with the Doctor in her Life; and depos'd further, that Mrs. *Pindar* told her (the Deponent) that Mr. *Fowler* had examin'd her touching her Visions; but said she was sure she had said nothing prejudicial to the Doctor; and that Mr. *Pindar* had told the Deponent, that when his Wife came to *London*, she told him, that were it to do again, she would not say what she had said to Mr. *Fowler*, believing 'twas a Snare or a Trap; and depos'd also, that 'twas another Person said the Coldness, &c. was a dying to Vanity, and not the Doctor.

John Grip depos'd, That Mrs. *Pindar* told him that Doctor *Portage* said he had Power to bestow the Gifts and Graces of the Spirit on whom he pleas'd; and that at another time Mr. *Blagrove* said to his Wife (the Deponent being present) that the Doctor held strange Opinions, contrary to the Word of God, as [that Jesus Christ was not God, that he was but a Type, Man and not God, a Shadow and not the Substance.]

Mrs. *Blagrove* depos'd, That the Doctor never discours'd her, unless she first began with him; and if he did ever confirm her in any thing, 'twas not disagreeable to the Word of God.

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Then the Doctor produc'd a Letter writ by Mr. *Blagrove*, purporting "That he understood the Contents of *John Grip*'s Deposition; and affirm'd "he should be at any time willing to testify on "Oath that 'twas false; and that he had often "heard the Doctor solemnly avow, and had given "under his Hand a quite contrary Opinion; and "that the Doctor had given him full Satisfaction, "relating to the Divinity of Christ, and of other "Matters of Faith of high Concernment." But the Court refus'd to have it read.

John Grip depos'd likewise, That Mr. *Blagrove* told him that Dr. *Portage* had advis'd him, the said *Blagrove*, to sell his Estate and retire to the Doctor's House, it being the Ark to receive all that should be sav'd.—In answer to this Mrs. *Blagrove* depos'd, that she had heard such a Report; and about five

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or fix Weeks since ask'd her Husband about it, who told her (the Deponent) he did not remember that the Doctor ever said any such thing.

Next follows *Loader* the Smith's Deposition, relating to the Doctor's bringing Mrs. *Flavel* to his House, her lying in there, &c. as has been before related; and Mrs. *Flavel* appear'd in Court, in obedience to a Summons that had been sent her, but refus'd to answer any of the Questions that were ask'd her, saying, if they had any positive Crime to charge her with, she would give them an Answer by the Mouth of her Lawyer; on which the Commissioners threatned to send her to Prison, but she refus'd to be examin'd.

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Page 728.

To prove his Ignorance and Insufficiency, *George Haslet* of *Bradfield*, Weaver, depos'd, that the Doctor us'd the following Words, viz. ["That it was a vain thing to trust in the Blood of him that died at *Jerusalem* 1600 Years since, or more, unless it were acted in me or in thee, for that was but in the Type, the Substance must be fullfill'd in us; and that Christ must be crucified in us, we must have the *Jews* and *Pilate* to put him to Death in us; otherwise it was a vain thing to believe in him that died at *Jerusalem* 1600 Years since without us."] *THE NEW TESTAMENT*

And he further depos'd, That about a Month since, in a Sermon at *Bradfield* Church, the Doctor said, "That doubtless the Apostles by that Text [Know you not that your Bodies are the Temples of the Ho'y Ghost?] did not mean these earthly Bodies."

And he depos'd likewise, that in another Sermon, the Doctor deliver'd these Words, "That by that Text [Gen. 18. 19. I know him that he will command his Children and his Household after him] I was not meant the outward Household of *Abraham*, but his inward Household, his Will and Affections, which he was Lord Paramount over; and quoted the Text in *Joshua* [As for me and my House we will serve the Lord] which he said was the inward House and not the outward." And that the Deponent judg'd the same contrary to the Mind of the Holy Ghost,

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The Doctor said, that in the whole Scope of his Ministry, he usually gave the literal and allegorical Sense of the Scriptures; and that the Deponent mistook, for that he had before open'd the Historical Part, and was come to treat of the Mystical Interpretation, in making a Spiritual use of the Scriptures, and applying them to the inward Man; and desir'd time to bring in his Witnesses to prove it; and urg'd that 'twas not Justice to take this Evidence against him just before they design'd to give Sentence, and not allow him time to make his Defence by the Testimony of other Witnesses; and the Doctor objected to this Witness that he was a Drunkard, and that (as he had not writ this down) 'twas improbable he should deliver it verbatim; and that a small Mistake in the Words might make a great Alteration in the Sense.

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Then *Richard Saywood* was set up, who depos'd, that on the ninth of *September* 1650, he heard a mournful Cry in *Bradfield Parsonage House*, like one in extreme Pains; and that going the next Day to *Mr. Francis Pordage* at *Stanton-Dingley Parsonage*, he ask'd the Deponent what he thought of that Noise he heard at the Doctor's; and the Deponent answering he could not tell, the said *Mr. Pordage* told him, "That the Lord was about a great Work in this Kingdom, and to this Nation; and that the Cause of this Cry was one in Travail, but now she was deliver'd of a Man Child, and he and others could witness it."

Mr. Francis Pordage being sworn, acknowledg'd he was so unadvis'd to give that Account to *Saywood*; and being ask'd by the Court who was in Travail, and what became of the Male Child, answer'd 'twas *Mrs. Flavel*; and that 'twas the Birth, Death, and Resurrection of Christ in his Nature. Being further ask'd how that of *Mrs. Flavel* was so great a Work that God was doing to this Nation, denied that he said it, tho' before he acknowledg'd it, and depos'd that 'twas not a natural Birth, it being nothing but the Groanings and Intercession of the Spirit in her Prayer.

Hearsay admitted as Evidence again.

Mr. Tickle sworn again, depos'd, That *Susannah Day* could not appear (by reason of Sickness) according

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according to the Summons, but that she had told the Deponent that the last time she was at Dr. *Pordage's*, that they told her her Eyes were open'd, and that she then saw the new *Jerusalem* come down from Heaven, being a City four square, with Borders and precious Stones; and that 'twas not her Fancy only, but that she saw it really; and the Doctor's Daughter saw two Angels holding a golden Crown over her Head.

To this Evidence the Doctor made no Answer.

Then the Doctor offer'd a Protestation in writing, that he disown'd and rejected the Positions in the first Charge, and avow'd and maintain'd the contrary Principles, and desir'd it might be publickly read before the Court and Audience; but after some private Consultation, the Commissioners suppress'd it; and acquainted the Doctor, that if Mr. *Starkey* (his Council) had any thing to offer in his Behalf, he had liberty to speak. Whereupon Mr. *Starkey* sum'd up the Evidence, and made some Observations upon it, in behalf of the Doctor; shewing, that if they proceeded by the Rules of Law, there was not sufficient Grounds for censuring the Doctor.

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Then the Doctor was order'd to withdraw; and after about an Hour and half's Debate among themselves, the Doctor was call'd in again, and the Register order'd to proceed to Publication; whereupon the Depositions on both Sides were read; and Mr. *Ford* made a Speech in Justification of the Proceedings and intended Sentence; and observ'd, that this being a Court of Equity and of Ecclesiastical Jurisdiction, the Commissioners might receive such Evidence as had been given against the Doctor, as good and sufficient Proof (tho' not esteem'd so in the Courts of Law) for that they were not tied up by Statutes and Forms of Law, but proceeded according to Justice.

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After which the Doctor desir'd he might reply to some things which had been misrepresented by Mr. *Ford*, but he was not permitted; he then desir'd they would receive and seriously peruse a Paper, which he had drawn up in his Defence, before they proceeded to Sentence; but 'twas return'd without

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without being read, and the Doctor, &c. order'd to withdraw.

Being call'd in about two Hours after, Mr. Lee (a Minister) began a very formal Speech, importing the Concern of the Court in passing Sentence against him, and said, tho' he did not think him guilty of maintaining those horrid Tenets, yet he said they must proceed *secundum Allegata & Probata*.

Then the Register was commanded to do his Office, who openly read the Sentence,

Page 792.

Berks ff. *By the Commissioners appointed by Ordinance of his Highness the Lord Protector and his Council, for ejecting of Scandalous, Ignorant and Insufficient Ministers and School-Masters. Reading, Dec. 8. 1654.*

The Sentence
against Doctor
Pordage.

" WHEREAS several Charges have been ex-
" hibited to us against Dr. John Pordage,
" Rector of Bradfield in this County, who hath
" given in several Answers in Writing thereunto;
" and thereupon we have proceeded to Examina-
" tion of several credible Witnesses upon Oath, for
" proof of the said Charges in open Court; which
" Witnesses the said Doctor hath been permitted
" fully and freely to cross-examine: And the said
" Doctor hath been requir'd to produce his Wit-
" nesses for his Justification, and to bring in his In-
" terrogatories, upon which he would examine his
" Witnesses, and hath had Day after Day assign'd
" him for that Purpose; but notwithstanding hath
" peremptorily refus'd so to do, persisting in his
" own way, and refusing to observe our Direction in
" his Proceeding; and hath publicly, by his evil
" and contumacious Expressions, slighted and af-
" fronted the said Commissioners; and instead of
" producing his Interrogatories in writing, accord-
" ing to our Order, he hath now verbally offer'd
" several Questions, which he desires to have pro-
" pounded to several of his said Witnesses, which
" the Commissioners (upon consideration of) have
" judg'd impertinent to clear him from the Matters
" charg'd

"charg'd against him, but merely to delay and
 "weary out the said Commissioners; and therefore
 "they have examin'd only to two of the said Ques-
 "tions, which they conceiv'd might somewhat
 "tend to his Justification. And upon full hearing
 "what the Doctor could say, and Mr. Starkey of
 "Council in his behalf, upon the whole Matters,
 "and upon due Consideration, it appeareth that the
 "said Doctor is guilty of denying the Deity of Christ, and
 "the Merit of his precious Blood and Passion; and hath
 "asserted and maintain'd, That Christ was a Type and
 "but a Type, and not perfect; and that his imputative
 "Righteousness was sapless; and several other bellish Opi-
 "nions; and is otherwise scandalous, as by the said
 "Depositions may more fully appear. And it is
 "likewise declar'd, under the Hands of six of the
 "said Commissioners, and several Ministers their
 "Assistants, that upon the Matters prov'd against
 "him, the said Dr. Pordage is ignorant and very in-
 "sufficient for the Work of the Ministry. It is there-
 "fore Order'd, That the said Dr. Pordage be and is
 "hereby ejected out of the Rectory of Bradfield afore-
 "said, and Profits thereof. But the said Commis-
 "sioners do grant him time to remove himself, Fa-
 "mily, and Goods and Chattels, out of the said
 "Parsonage-House, till the second of February next;
 "and further time to remove his Corn out of the
 "Parsonage-Barns till the 25th of March next.

The Tryal of the Honourable Colonel JOHN
 PENRUDDOCK, for High-Treason, be-
 fore Commissioners of Oyer and Ter-
 miner, at the Castle of Exon the 19th of
 April 1655.

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Drawn up by himself, at the Request of a Friend,
 a little before his Execution.

COLONEL Penruddock was arraign'd, together
 with Mr. Hugh Grove, Mr. Richard Reeves, Mr.
 Robert Duke, Mr. George Duke, Mr. Thomas Fitz-
 James, several other
 Cavaliers.

The TRYAL of

James, Mr. Francis Jones, Mr. Edward Davis, Mr. Thomas Poulton, and Mr. Francis Benner. The Indictment being read; the Colonel, in behalf of himself and his Fellow-Prisoners, said he thought the Indictment was not according to Law; and desir'd they might have Council assign'd them to argue the Defects and Errors it contain'd; he said Council had been allow'd to *Lilburne* and *Rolf* a Shoe-maker; and that it was hard if free-born *English* Gentlemen could not be allow'd the same Privilege that their Inferiors had before them.

Mr. Attorney answer'd, he must plead *Guilty* or *Not Guilty*, or Sentence would be pronounc'd against him; that Council could not be allow'd, and if he thought to save his Estate by standing mute he was mistaken.

The Colonel then demanded if he should have Council allow'd him if he did plead; but was told by Mr. Attorney that the Court could make no Bargains with him; and at length the Colonel, at the Instance of the other Prisoners, pleaded *Not Guilty*; after which he demanded to be allow'd Council again, but 'twas peremptorily refus'd him.

Then the Jurors were call'd, of whom the Colonel challeng'd 24; and 12 being sworn, the other Prisoners were taken from the Bar; and the Colonel was try'd singly: He desir'd a Copy of his Indictment, and time to prepare for his Defence till the next Day, both which were denied; and he was told the Court expected he should enter upon his Defence immediately.

Then he said there could be no Treason in this Nation but what was founded upon Common or Statute-Law; and he did not observe that this Indictment was founded upon either; and that there was no such thing in Law as a *Prosecutor*.

Mr. Serjeant *Glyn* told him he struck at the Government, and that he would fare never a whit the better for this Speech.

The Colonel reply'd, His Life was as dear to him as this Government was to any of them; and he observ'd, that it was said at the latter End of the Indictment that he was guilty of High-Treason, by Virtue of a Statute in that Case made and provided:

He desires to know on what Statute he was Indicted; for there could be no Treason but against the King.

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vided : He desir'd therefore if there was such a Statute they would let it be read, for he knew of none such: Then he quoted *Bracton*, where he says, *Omnies sub Rege, & ipse nullo nisi tantum Deo, &c.* and said, that he had always been for the King ; and in the Parliament-Roll, N^o 7. it is said, *Whoever shall refuse Aid to the King when War is levy'd against him, or against any that keep the King from his just Rights, offends the Law, and is thereby guilty of Treason.* And that all Men who adhere to the King in personal Service, are freed from Treason by Law, Rex & Consuetudo Parliament. 11 Hen. VII. c. 1. And he thought it strange that there should be a Statute, which made his adhering to the King, according to Law, to be High-Treason notwithstanding, and therefore he pray'd again that it might be read.

Mr. Attorney told him he had not behav'd himself so as to expect any Favour of the Court. The Colonel reply'd, he did not ask it as a Favour, but as his Right : And if they would not do it for him, they ought to do it for the sake of the Jurors, that they might not give their Verdict blindfold, to the Hazard of their Souls.

Then Mr. Attorney made a long Speech, aggravating the Charge against the Colonel, and telling the Jury he had been four Years in France ; and that he held Correspondence with the King his Master, of whom he had learnt the Popish Religion, and would introduce Popery, &c. That he endeavour'd to bring in a debauch'd, lewd young Man, and engage the Nation in another bloody Quarrel ; and that if he had not been timely prevented, he would have destroy'd the Jury and their Families, &c.

The Colonel interrupted Mr. Attorney, and told him he had heretofore been Council for him, and then made his Case better than it was ; and that he perceived he had the Faculty of insinuating Falshoods ; that he had put him in a Bear-skin and now design'd to bait him : But that he saw a Gentleman in Court (meaning Captain Crook, to whom the Colonel surrendred upon Articles) who ought to have screen'd him from this Prosecution. [Here Captain Crook stood up as if he design'd to have reply'd to the Prisoner, but sat down without saying

The Colonel surrendred upon Articles which he thought should have been a Bar to this Process.

The TRIAL of

saying any thing.] Then the Witnesses were called, but the Colonel did not think it worth his while to give us their Evidence: Only he observ'd, that it being demanded of the Crier of *Blandford* what Words the Colonel us'd at the proclaiming King *Charles* in the Market there; he said; the Colonel declared for King *Charles* the Second, and setting the true Protestant Religion; and for the Liberty of the Subject, and Privilege of Parliaments. From whence the Colonel observ'd, that it was not the Popish Religion, as Mr. *Attorney* said, that he would have brought in, but the true Protestant Religion. The Colonel also insisted, that they could charge him with no more than a Riot; and requir'd the Judges to be of his Council in that Matter, according to their Duty: Whereupon Commissioner *Lisle* told him he should have no Wrong done him; (but the Colonel says he meant no Right, he thought, if he might judge by his Behaviour.)

The Colonel added; That if he had seen a Crown upon the Head of any Person; he might have known what was Treason; and the Law might have taken hold of him as this Kingdom was a Monarchy; but here was no such Land-mark in this Case; and he did not know how he could be guilty of what he was charg'd with: Besides that, he was charg'd with committing Treason at *South-Moulton* in *Devonshire*, and they gave Evidence of Facts at *Salum* and *Blandford*.

Then he address'd himself to the Jury, and desired they would observe how zealously many Untruths had been urg'd against him; and that he had made it appear there could be no Treason but against the King; and that the Law knew no such Person as a Protector, though Mr. *Attorney* pretended to quote a Statute for it; and that they should not, by the Splendor of the Court, be betray'd into a Sin of a deeper Die than their Scarlet, by drawing his Blood upon their Heads. He bid them look upon him, and said he was the Image of his Creator, and that Stamp of God's, which was upon his Visage, was not to be defaced without an Account to be given for it: That he had insisted on his being try'd by those Laws which had been established

The Colonel had
proclaim'd the
King at *Bland-
ford*.

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as a Protector.

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bliss'd by the Wisdom of their Ancestors, but he was try'd by a Law that was cut out by a rebellious Sword; and if they did not look well to it, the Sheets on which it was recorded might serve for some of their Shrouds: And he bid them remember that the last Parliament held, that the Legislative Power could not be out of themselves; that seventeen or twenty of that very County were of that Opinion, and deserted the House; and if they found him guilty they would bring them into Danger, and consequently themselves, and their Blood might run in the same Channel with his: That at most they could make but a Riot of the Matter: However, if they found it specially, they would in some measure acquit themselves, and throw the Blood that would be spilt upon the Judges. Then he bid them consider of it, and pray'd, that God would direct them for the best.

The Jury being withdrawn, after a Quarter of an Hour's Recess brought the Colonel in *Guilty*. The Colonel is found Guilty.

Monday, April 23. 1655, the Colonel was brought to the Bar again, with twenty six other Gentlemen, who were Prisoners. And the Court asking him, what he could say why Sentence should not be pass'd upon him? He said, he could have offer'd his Articles of Surrender, but did not think it proper in this Court: And he should only say, that if the Protector would give him his Life he should return him Thanks; as he should the Court, if he found Favour; and if he did not, he should forgive them.

The Court pass Sentence on him, and 26 more as Traitors.

Then Mr. Serjeant Glyn, after a most bitter Speech (a little inclining to Nonsense) pronounc'd Sentence upon the Colonel, and the rest of the Prisoners, *viz. That they should be drawn, hang'd, and quarter'd*: Which the Colonel said he thought a very odd Performance of the Articles between unworthy Captain Crook and him, wherein he had stipulated for Life, Liberty and Estate, which he could prove, and would die upon. And he complains of Colonel Dove, the Sheriff of Wiltshire, who incens'd the Jury against him, by telling them of the Incivilities he receiv'd from the Colonel's Party; and adds, that every Man in his Place he observ'd

He says it is an odd way of fulfilling of Articles, wherein he stipulated for Life, Liberty and Estate.

The TRYAL of

took great Pains in carrying on their Master's Work. These the Colonel says were the most material Passages that he could on the sudden recollect of what pass'd at his Tryal.

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The Report of the Committee of the House of Commons, to whom the Tryal of JAMES NAYLER, for Blasphemy, and other Misdemeanors, was refer'd, A. D. 1656.

James Nayler's Account of himself.

JAMES NAYLER acknowledg'd to the Committee, that he was born at *Ardistoe* near *Wakefield* in *Yorkshire*, where he liv'd two or three and twenty Years, when he married according to the *World*: That he went from thence to *Wakefield*, and when the Wars began, he enter'd himself a Soldier, and at length came to be Quarter-Master in Lieutenant-General *Lambert's Troop*; but falling sick in *Scotland* he went home, where he was a Member of an independent Church; (but being cast out for Blasphemy, and some wanton Carriage towards Mrs. *Roper* a married Woman, and for that he gave out he might lie with any Woman of his Judgment) after some time he went to visit the Quakers in *Cornwal*, and by the way was committed to *Exeter Jail* as a Vagrant; but he and his Company being set at Liberty by an Order of Council, in their way to *Bristol* he took upon him the Character mention'd in the following Depositions.

The Charge against him was,

The Charge against him for personating our Blessed Saviour.

The Evidence against him as to the first Article.

1. That he did assume the Gesture, Words, Honour, Worship and Miracles of Christ.
2. That he assum'd the Names and incommunicable Attributes of our Blessed Saviour.

Dorcas Erbery depos'd, That she spread Garments before him; and that the Company sung as he rode along, *To the Holy One of Israel* [meaning *Nayler*.]

Martha Simmons depos'd, That she spread Garments in Obedience to the Lord [*Nayler*.] And being ask'd if they sung *Holy, Holy*, before him; she

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She answer'd, that it was their Life to praise the Lord.

Hannab Stranger depos'd, That she threw two Handkerchiefs before him ; for he that was the Lord of All commanded her so to do : And being ask'd if she sung *Holy, Holy* ; she said, she could not remember the Words ; but if she did nor, she witness'd, that the *Holy of Holies* was risen, who mov'd her so to do.

John Stranger depos'd, That he saw People spread Garments before *Nayler*, in the Way from *Exon* to *Bristol*.

George Witherly, Richard Hart, and Thomas Woodcock, in their Examinations before the Mayor of *Bristol* (and transmitted to the Committee) depos'd, That Women led his Horse, and *Woodcock* went bare-headed before him into *Bristol* ; and *Woodcock* said he was mov'd by the Spirit so to do.

James Naylor himself confess'd, That some Cloaths, Gloves, and other Things, were spread before him ; and that Praises were sung to the Lord (it might be *Holy, Holy, &c.*) and acknowledg'd that a Psalm was sung before him at his Entrance into *Bristol* ; and said it was such as the Lord was pleas'd to put into their Hearts ; and said it was done for the Praise of his Father ; and that he might not refuse any thing that was mov'd of the Lord ; and he did think the Father did command them to do it. And being ask'd who they meant by *Holy, &c.* he answer'd, they were of Age to answer for themselves : He confess'd also, that a Woman did hold his Bridle, and he heard that one went bare-headed before him ; but said, he did not mind if it were so or no.

Naylor had also the Description of our Saviour about him, as it was given in Writing by *Publius Lentulus* to the Senate of *Rome* : And 'twas observ'd by the Committee, that his Person much resembled the Picture commonly drawn for our Blessed Saviour, and he affected the same Expressions : As when he was ask'd how he could live without Food fifteen or sixteen Days, as he pretended ; he answered, *Man liveth not by Bread alone, but by every Word which proceedeth out of the Mouth of God.* And

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The Description of our Saviour by *Publius Lentulus* found upon him.

His Person not unlike that Description.

The TRYAL of

in another of his Answers he says, *If they had known the Father they should know him also.* It was testified also, that several Women kneel'd to him and kiss'd his Feet; and *Dorcas Erbery* added, that she was dead two Days in *Exeter Jail*, and *Nayler* laid his Hands on her and rais'd her: And *Nayler* being ask'd by the Committee, whether he rais'd her from the Dead; he answer'd, I can do nothing of my self, but there is a Power in me from above: And being ask'd, who bore Witness of him; he answer'd, the Scriptures do bear Witness to the Power which is in me, which is Everlasting; and that it was the same Power whereof they read in Scripture that had rais'd the Dead, according to the Power manifest. That as to what *Dorcas Erbery*, or any other, attributed to him as a Creature, that hath Beginning and Ending, he utterly deny'd, but what any Person saw of God in him, that he did not deny: That the same Power which did raise from the Dead, which they read of in Scripture, the same Christ, the same Anointing, according to the Measure of him, was manifest in himself [*Nayler*] and no other: And being ask'd, if any pray'd to him; he answer'd, as a Creature, he did disown it.

Resolved, that he was Guilty of the first Article.

Upon the Whole, the Committee resolv'd, That the first Article was prov'd.

As to the second Article, (*viz.*) *That he assum'd the Name and Incommunicable Attributes of our Blessed Saviour.*

Proof of the second Article.
Page 798.

A Letter from *Hannab Stranger* was found upon him, wherein she gives him the Title of *Fairest of Ten Thousand*: To which *Nayler* answer'd, if she meant it of what was visible, he denied the Title; but as spoken of that which the Father had begotten in him, he dare not disown it; for that was beautiful wherever it was begotten. In the same Letter *Stranger* gave him the Title of the *Only begotten Son of God*. And at his Examination at *Bristol*, being ask'd, if he was the only begotten Son of God; he answer'd, that he was the Son of God, and that the Son of God was but one.

In a Letter found about him from *Jane Woodcock*, she gives him the Title of *The Prophet of the Most*

High ; and *Nayler* himself, in his Examination at *Bristol*, aver'd, that he was *the* Prophet of the Most High God ; but before the Committee he only said he was *a* Prophet of the Most High God ; and that there were other Prophets beside him.

In a Letter from *Thomas Simmons* he had the Title given him of *The King of Israel* ; and *Dorcas Erbery* being ask'd, why she pull'd off *Nayler's* Stockings ; she answer'd, because he was *the Holy One of Israel*, and was worthy of it : And *Nayler* being examin'd, as to his assuming this Title, by the Committee answer'd, he had no Kingdom in this World, yet a Kingdom he had, and he that had redeemed him, had redeemed him to be a King for ever ; and said, he denied any such thing as *a Creature*, further than as God manifested in the Flesh ; and if they gave that Title to Christ in him, then he did own it.

In a Letter from *Hannab Stranger* she gave him the Title of, *The Everlasting Son of Righteousness* ; and being examin'd about it, *Nayler* answer'd, God manifested in the Flesh he did witness, and might not deny ; and that where God was manifested in the Flesh, there was the Everlasting Son of Righteousness. She gives him also the Title of *Prince of Peace* ; and *Nayler* at his Examination says, the Prince of Peace I own ; the Everlasting Peace is begotten in me.

Page 192.

Jane Woodcock, in a Letter to *Nayler*, says, *He was sent to judge and try the Cause of Israel* ; and *Nayler*, at his Examination, says, he was sent to try the Cause of *Israel*, by him who had made all Creatures, and had sent his Spirit into him, and his Son into him to try the Cause ; but said, he was no Judge in Carnal Matters : Being ask'd, whether he was more sent to judge the Cause of *Israel* than another ; he said, he was sent no otherwise than as the Father and Son was in him.

John Stranger, in the Postscript to his Wife's Letter found upon *Nayler*, says, *Thy Name shall no more be call'd James, but Jesus* ; and *Nayler* being examin'd as to this, said, that if they gave it to any other than to the Son of God that was in him, he deny'd the Name, and said, he understood they

Page 200.

The TRYAL of

gave that Name to the *Jesus*, to the *Christ* that was in him; That he did not call himself by that Name, but what his Father had publish'd, was another thing.

In a Letter from *Martha Simmons* to *Nayler*, she addresses herself to him thus, viz. *Thou well beloved Lamb of God, in whom the Hope of Israel stands.* And *Nayler*, in his Examination at *Bristol*, says, if he were not his Lamb he should not be sought to be devour'd; and being ask'd whether *Israel's Hope* was, in any measure, in him, he answer'd *Yes*. Being ask'd by the Committee, whether their Hope in *Israel* did stand in him, he answer'd, it stands only in *Christ*, and as *Christ Jesus* is known in me. And being ask'd again, are you he in whom the Hope of *Israel* stands? he answered, *Christ in me the Hope of Glory.*

Resolved, That
he was guilty
of the second
Article.

Upon the whole, the Committee, *Resolv'd*, That *James Nayler* had assum'd the several Names and incommunicable Attributes and Titles of our blessed Saviour above specified.

The Committee observe further, that at his Examination at *Bristol*, being ask'd why he came in so unusual a manner with a Woman leading his Horse, and singing before him; he answer'd, he might not refuse any thing that is mov'd of the Lord: And being ask'd, if he reprov'd the People for spreading Garments, and singing such Words before him; he said, he bid them take heed they did nothing but what they were really mov'd of the Lord. And being question'd by the Committee concerning the Titles given him in the Letters, he said, he did not design they should have seen them, because he knew there were things in them that many could not bear; but now he saw his Father purposed they should not be hid.

And being ask'd again, whether he own'd or disclaim'd these Attributes? he answered, if they had it from the Lord, what was he that he should judge it? But said further, if they were attributed to the Creature, then it was reprovab; but if they did it to the Lord, he dare not reprove it: And said, he look'd upon the Honour and Worship given to

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to him, to be to the true Honour of Christ, or else he would utterly have denied it.

John Baynham, Deputy-Serjeant to the House, to whose Custody *Nayler* was committed, also depos'd, That *Nayler* usually sate in a Chair, and all his Company, both Men and Women, did kneel; and when they were weary of kneeling they sate on the Ground before him, singing, *Holy, Holy, to the Almighty, to the true God, and great God, and Glory to the Almighty, &c.* And this they did all Day long, but that *Nayler* never sung himself; and that there was a great Resort of People to him, who in like manner did kneel before him; and that *Nayler* never shew'd any Dislike, or reprov'd them for it. And two of the Committee went to the Place where *Nayler* was in Custody, and were Eye-witnesses of what the Deputy-Serjeant had depos'd before them.

Page 201.
His Followers
give him Di-
vine Worship
who were in
Custody with
him.

As did many
that came to
see him.

The Committee demanding of *Nayler* what he had to say for himself; he answer'd, that he abhorred that any of that Honour which was due to God should be given to him, *as he was a Creature*; but it pleased the Lord to set him up as a Sign of the Coming of the Righteous One: And what had been done in the passing through the Towns, he was commanded by the Power of the Lord to suffer such things to be done to the Outward as a Sign. He abhorred any Honour as a Creature.

December 5. The Report of the Committee concerning *James Nayler* was read in the House.

December 6. *James Nayler* was sent for to the House, and being commanded to kneel, he refus'd, and standing with his Hat on, the Serjeant, by the Speaker's Order, took it off. Then it was demanded, if his Name was *James Nayler*; to which he answer'd, he was so call'd ever since he could remember. And being ask'd, whether those were his Answers to the Committee, which were mention'd in the Report, he acknowledg'd they were, and then withdrew.

Resolved, That the House do agree with the Committee in the Report concerning *James Nayler*.

The House
agree with the
Committee.

Monday, December 8. The Debate concerning *James Nayler* was resum'd: And it was resolv'd,

The TRIAL of

1. That he was guilty of horrid Blasphemy ; 2. That he was a grand Impostor, and Seducer of the People.

Page 802.
But resolve not
to proceed Ca-
pitally against
him.

Or cut off his
Hair, which he
affected to wear
like our Saviour.

Tuesday the 16th of *December*. It being propounded, whether a Bill should be brought in for punishing *James Nayler* ; and the Question being put, That the Question be now put, it pass'd in the Negative : No's 96, Yea's 82.

And the Question being put, That it be part of his Punishment to have his Hair cut off ; this also pass'd in the Negative.

James Nayler's
Sentence.

Wednesday, December 17, 1656. Resolved, That *James Nayler* be set with his Head in the Pillory, in Palace-Yard, on *Thursday* next, and be whip'd from thence to the *Old Exchange* by the Hangman ; where on *Saturday* following he shall likewise be set in the Pillory, and in each Place wear a Paper, signifying his Crimes : That at the *Old Exchange* his Tongue shall be bored with a hot Iron, and he shall be there also stigmatiz'd in the Forehead with the Letter *B* ; and afterwards convey'd to *Bristol*, and ride into, and through the said City, on the bare Horse back, with his Face to his Tail, and be publickly whipt the next Market Day after he comes thither ; and afterwards be committed to *Bridewell* in *London*, and restrain'd from the Society of all People, and have neither Pen, Ink or Paper, or any Relief but what he gains by his Labour.

Which Sentence was afterwards executed upon Nayler,

Page 803.

The Tryal of Sir HENRY SLINGSBY, Knight, for High-Treason, before the High-Court of Justice in Westminster-Hall, the 25th of May 1658.

THE Court being set, and the Prisoner brought to the Bar, after the Commission for Tryal of the Prisoner was read, Mr. *Attorney* prefer'd the following Charge against him, (viz.)

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" That the Town of *Kingsfon upon Hull*, in the County of *Kingsfon upon Hull*, on the 11th of *October* 1656, and ever since, was a Town belonging to this Commonwealth; wherein was quartered a Garrison, and Part of the Army of this Commonwealth: And that the Prisoner, Sir *H. Slingsby* late of *Redhouse* in the County of *York*, intending to embroil this Commonwealth in intestine Wars, on the 30th of *April* last, and divers other Days and Times, since the tenth of *October* 1656, as a false Traitor and Enemy to his Highness the Lord Protector, did plot, contrive, and endeavour to betray the said Town and Garrison to *Charles Stuart*, eldest Son of the late King *Charles*, now an Enemy to the Lord Protector, and to this Commonwealth. And the Charge further sets forth, that the said Sir *Henry Slingsby*, at the Time and Place aforesaid, did contrive and endeavour to raise a Mutiny in the said Garrison, and to withdraw *Ralph Waterhouse*, *John Overton*, *George Thompson*, and other Officers of the said Garrison, from their Obedience to his Highness the Lord Protector; and did also contrive and endeavour to raise Forces against the Commonwealth; and that he did publish and declare the said *Charles Stuart* the Son to be King of *England*, *Scotland* and *Ireland*, and held Correspondence with him: And that he deliver'd to the said *Ralph Waterhouse* a certain Instrument, which he said was a Commission from *Charles Stuart* for the said *Waterhouse* to be Governor of the Castle: All which Treasons were contrary to the Statute in that Case made and provided."

Impeachment
for High-Trea-
son against the
Protector and
Common-
wealth.

Which Charge being read, the Lord-President acquainted Sir *Henry*, that the Court requir'd him to give a positive Answer, whether he was Guilty or Not Guilty.

John Lisle Pre-
sident.

Sir *Henry Slingsby* desir'd he might be try'd by a Jury, according to Law; but the President told him the Court consisted of a Number amounting to two or three Juries; that it was Acts of Parliament that made Law and Justice; and they had alter'd

Page 804.
The Prisoner is
refus'd a Tryal
by Jury.

alter'd the manner of Tryal, and constituted this Court both Jury and Judges.

Sir Henry Slingsby said, if he was try'd by a Jury he should have the Advantage of his Challenges, which he could not have here where they were both Judges and Jury.

The Lord-President told him, if he had any Exception to any particular Man he might make it; and that he was of the Parliament when that Act was made, and so consented to it.

Sir Henry said, he was a Prisoner when the Act was made, and he thought he could not, Trespass against their Laws, because he never submitted to them; and that Laws were intended to preserve Liberty and Property; but every thing was taken from him; he had receiv'd no Benefit by their Laws: However, Sir Henry thought fit at length to plead *Not Guilty*.

Then Mr. Lechmere open'd the Charge, and Mr. Attorney Prideaux, in a short Speech, endeavour'd to aggravate Sir Henry's Offence: After which Mr. Attorney call'd his Witnesses; and first,

Ralph Waterhouse was sworn.

The Officer's
Evidence of Sir
Henry's tamper-
ing with them
to bring them
over to the
King's Interest.
Page 205.

Major Waterhouse depos'd, That as he was hunting in the latter end of December last, Sir Henry Slingsby's Son came to him, and told him Sir Henry gave his Service to him, and sent him a Book, which the Deponent look'd into, and found these Words written, *Put this out with your Finger, and then tell me whether Robert Gardiner had not spoke to me to serve the King.* That the Deponent acquainted Colonel Smith with it, who advis'd him to discover if Sir Henry Slingsby was not carrying on a Plot: Whereupon the Deponent went to Sir Henry (who was Prisoner in Hull;) and Sir Henry, after some Discourse told the Deponent, that one (meaning the Protector) had put a Slight upon him, but that he might right himself; and promis'd the Deponent a Sum of Money if he would secure the *South-house* for the Service of the King; and at another time offer'd 5000*l.* to the Deponent for that Service; and told him, if that House were secur'd, in a little time he would bring an Army to besiege Hull, and then their Work would be half done;

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done : And that on the second of *April* last he deliver'd the Deponent a Commission (which he said was from the King) to be Governor of the Castle, and two Blockhouses near *Hull*, which Commission was dated at *Bruges*, *March* 12, 1657. And that he engaged, by Bond, to repay the Deponent such Money as he should lay out in Victualling the *South-house* : And that Sir *Henry* read a Letter to him from *Charles Stuart* ; wherein he tells him, *He should be always sensible of his Favours, &c.* That the Deponent asking from whence the Army should come, Sir *Henry* reply'd, that the Duke of *York* was to have seven or eight thousand Men of the King of *Spain*, if they had a Place of Security. Sir *Henry* told the Deponent also, that he had a way of receiving Commissions from the King, which he would not discover.

Att. Gen. What Officer were you ?

Mr. Waterhouse. I have a Command of a Company, and of the South Blockhouse. — Sir *Henry* told me also, that there should be 600 Men at *Paul* near *Hull*. That he had offer'd Captain *Overton* 20 l. to raise 40 Men ; and that the Captain should have a Deputation to command the Castle under me.

Captain *Overton* was sworn.

He depos'd, That he saw Sir *Henry* deliver Major *Waterhouse* the above mentioned Commission about the second of *April* last, in the Castle of *Hull* ; and the Commission dated the 12th of *March*, being produc'd in Court, he depos'd, that that was the very Commission ; and that the Major bid the Deponent read it when Sir *Henry* deliver'd it him in his Chamber ; and he did so.

Att. Gen. How long have you been an Officer at *Hull* ?

Capt. Overton. About ten Years ; and Sir *Henry* being my Prisoner, about *February* last, he mention'd these things first to me. He let me know, that a certain Colonel was to bring six Regiments from the King, and ask'd me of several Men if they were right, particularly one *Clarke* ; and he ask'd me, if I could let any Men into the Castle, and if I could victual it. That the King kept his Designs so close, that

that none knew of them, and said, it was uncertain whether he would land at *Hull* or *Scarborough*: That his Son had assur'd him the Town was too strong for the Garrison, and ask'd me if I knew the Town to be right; and he told me if he had any Favour with the King, I should not want any thing. He said, he would furnish me with Money, and desir'd I would not shoot great Bullets at King *Charles's* Men on their landing: And he further told me, that he would procure me a Deputation to command under Major *Waterhouse*.

Sir *Henry Slingsby* said, he perceived he was trepan'd by these two Fellows; and that they had sworn that seriously which was spoken in Mirth between them; and indeed, that they sought to him, and not he to them: That the Commission was not procur'd by any Intercourse he had beyond Sea, but was a Blank which he had had four Years before.

George Thomson, Lieutenant to *Waterhouse*, was sworn.

He depos'd, That Sir *Henry* told him he had great Confidence in him, for that he had good Thoughts of the King; and that there was a Design to bring the King in with a considerable Army, and he should have Notice of it; and that the King had promis'd Pardon to all Officers, but the Lord-Protector and *Bradshaw*.

Page 206.
Sir *Harry* does
in effect ac-
knowledge the
Discourse with
the Officers he
is charg'd with.

Sir *Henry* acknowledg'd, that there had been some such Discourse between them; but that he was desir'd by *Waterhouse* to speak to the Lieutenant to try him.

Mr. Serjeant *Maynard* sum'd up the Evidence; after which Mr. *Attorney* observ'd, that *Hull* was a Place of great Strength, and had the Design succeeded they had been all ruin'd: But he could not but pity those Gentlemen who were drawn into these Designs, for he was confident they would never take; and he could not but be concern'd to see those Grey Hairs (pointing to Sir *Henry*) thus go to the Grave. And then he demanded the Judgment of the Court. After which the Court adjourn'd. See the end of Mr. *Mordant's* Tryal for the Sentence.

The

The Tryal of JOHN HEWET, D. D. for High-Treason, before the High-Court of Justice in Westminster-Hall, the first of June 1658. Pag: 307.

THE Court being set, and the Prisoner brought to the Bar, Mr. *Attorney* exhibited an Impeachment of High-Treason against him, which was read by Mr. *Pbelps* the Clerk.

Impeachment
for High-Trea-
son against the
Lord Protector.

The Impeachment set forth, "That the said *John Hewet*, late of the Parish of *Gregory's* in the City of *London* D. D. intending to embroil this Commonwealth in new and intestine Wars, did, on the 30th of *April* last, and divers other times since the 10th of *October* 1656, as a false Traitor and Enemy to his Highness the Lord Protector, and to the Commonwealth, together with — *Trelawney* of *London* Gent, and *Henry Bishop* of *Lewis* in *Suffex* Gent, and other false Traitors, at the Parish of *Gregory's* aforesaid, at *Lewis* aforesaid, &c. traiterously contrive and endeavour to incite and levy War against the said Lord Protector and the Government establish'd, in order to subvert the same: And also at the Time and Places aforesaid, did traiterously declare, publish and promote *Charles Stuart*, eldest Son to the late King *Charles*, to be King of *England*, *Scotland* and *Ireland*; and did traiterously hold Intelligence with the said *Charles Stuart* the Son. And did traiterously consult with one *John Stapely* and *Henry Mallory*, how to effect his said Treasons; and did deliver Commissions from the said *Charles Stuart*, unto the said *John Stapely* and *Henry Mallory*, to levy War against the said Lord Protector and Commonwealth; all which Treasons are laid to be contrary to the Form of the Statute in that Case made and provided. And Mr. *Attorney*, in behalf of the Protector and Commonwealth, pray'd that the Doctor might be put to answer the said Impeachment, and receive such Tryal and Judgment thereon as to Justice

The TRYAL of

" Justice should appertain; and aver'd, that the
 " said John Hewet was the Person appointed by his
 " Highness the Lord Protector to be try'd and pro-
 " ceeded against according to the aforesaid Act.

John Lisle Pre-
 sident.
 The Doctor sits
 cover'd.

Doctor Hewet sitting cover'd while the Impeachment
 was reading, the Lord President order'd his Hat to be
 taken off, which the Doctor hearing, took it off him-
 self.

The Clerk demanded of the Doctor if he was
 Guilty or Not Guilty: The Doctor said, if he had al-
 ready misbehav'd himself, it was because he had
 not Council to direct him in the Proceedings of a
 Court of Law, of which he was wholly ignorant;
 that he had never chang'd his Cassock for a Jump;
 and was better acquainted with a Pulpit than a
 Bar; and better read in the Fathers than in Coke
 and Plowden. That he had heard there were such
 Niceties in the Law, that a Man might lose his
 Life for a Word very innocently spoken; and
 therefore desir'd a favourable Construction might
 be put upon what he said; and that he might be
 allow'd Council.

Page 802.

The President answer'd, that the Court was of
 Council for him; and that he was only to answer
 to a Matter of Fact, viz. Whether he was Guilty
 or Not Guilty.

The Doctor then desir'd to know by what Com-
 mission the Court sat; and desir'd their Commis-
 sion might be read.

The President said they sat there by a Commis-
 sion under the Great Seal, in pursuance of an Act
 of Parliament; and that it was not usual to read
 Commissions to Prisoners.

Says he is not
 to own every one
 for his Judge
 that would
 assume that
 Office, and de-
 mands to have
 their Commis-
 sion read.

The Doctor answer'd, that he was not to own
 every Person who would take upon himself to
 judge him; and therefore again desir'd to know by
 what Commission they sat, and who were his
 Judges.

The President reply'd, his Judges were sufficient-
 ly known; they were appointed by Act of Parlia-
 ment; and consequently with the Prisoner's Con-
 sent.

The

The Doctor desir'd to know if all the Commissioners appointed by the Act were there; he said he understood 150 were appointed; and according to the Earl of *Leicester's* Case, the 13th of *Eliz.* *Plowden*, fo. All the Commissioners ought to be there.

Att. Gen. The Doctor has this by Tradition; that Case is not parallel to this; for the Act says 150, or any 17 of them; so that any 17 are a *Quorum*; indeed, where no *Quorum* is appointed, as in that Case in *Plowden*, all must certify. All the Commissioners must act where no *Quorum* is appointed.

The Doctor said he appeal'd to the Judges, if this was a lawful Judicature in that respect notwithstanding: He conceiv'd, that all being commissioned to sit, that unless all sat, the rest could not try and examine: If the *Quorum* had been nam'd, he said he should not have disputed it; but it being directed to 17 or more, he thought all must sit.

Page 309.

The *President* told him he must acquiesce in the Judgment of the Court; and if he stood mute, it would be as dangerous to him as if he had confess'd the Crime.

The Doctor reply'd, he was so highly sensible of the Privileges of an *English* Free-man, that as well for the Satisfaction of his own Conscience, as for the Interest of the Publick, he would not willingly give them up to every one who demanded it; and therefore desir'd this Point might be determin'd by the Judges: He said he was loth it should be thought he sought any Disturbance on account of Self-Interest, he abhor'd being singular in Matters of State, as he did the being a Schismatick from the Church.

The Lord *President* told him, that if he had been a Friend to the Government and Peace of the Nation, he need not fear to plead to the Charge; that the Court had had much Patience in hearing him so long, he having not yet own'd their Authority.

Then the Clerk demanded again if he were Guilty or Not Guilty.

The Doctor answer'd, he should be loth to save his Life by forfeiting a good Conscience. That he

was

was look'd on in a double Capacity, as a Clergyman and Commonwealth's-man, and he would not be scandalous to either ; therefore, if they would do Justice to themselves, and vindicate the Legality of their Judicature, then he would proceed.

Mr. *Attorney* said this was flying in the Face of the Court, and was not to be endur'd : That he was not brought here as a Champion for the People of *England*, by the Charge it appear'd he was contrary affected ; and unless he would plead, it must be suppos'd he was guilty of it, which (says he) will be a high Scandal, Mr. Doctor, therefore you had best answer and vindicate yourself.

The Doctor still persisted in a Refusal to plead ; and said, that unless they would make it appear they were a lawful Judicature, he would rather die ten thousand times than be guilty of giving up his Fellow Freemens Liberties and Privileges.

Mr. *Phelps* a third time demanded, if he was *Guilty* or *Not Guilty*.

Dr. *Hewet* then demanded if there was an Indictment found against him by the Grand Jury, for by the fifth and sixth of *Edw. VI*, all Treasons were to be enquir'd of by twelve Men ; and the Commission by which they sat, he said, did not prescribe any other way.

The *President* answer'd, that he had a very great Grand Jury of forty Persons, who were authoriz'd by Parliament to order a Charge to be brought in against him, which they had done, and he was now requir'd to answer it.

The Doctor said, if they denied to try him by a Jury, he hop'd, however, they would allow him a Copy of his Charge, time to answer, and Council.

This being denied him, he then objected that he ought not to be arraign'd and try'd the same Day ; but was told that this was often done.

Then the Doctor said, the Act of Parliament on which he was try'd was made about two Years since ; and tho' the Members of that Parliament were chosen by the People, an Hundred and Fifty of them were not permitted to sit the 17th of September 1656. —

Mr.

The Doctor questions the Authority by which the Court sat.

Page 210.

Page 211.
150 Members not permitted to sit when the Act was made for altering the manner of Trial.

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Mr. *Attorney* said this was not to be suffer'd; that the Doctor's Words were seditious, and demanded Justice.

The Doctor answer'd, he hop'd they would hear him in Vindication of himself, and satisfy his Conscience as well as other Peoples, and not bring innocent Blood upon themselves, by assuming a Power that was not justifiable. That he was ready to submit to the Laws of the Land, and should not dispute Acts of Parliament; but he thought a House of Commons had not Authority enough —

He disowns
the present Au-
thority.

Here the President interrupted him, saying, Pray, Mr. Doctor remember that Text, *He that seemeth to be Religious, and bridleth not his Tongue, his Religion is vain.* Will you plead or not?

The Doctor answer'd, that his speaking in behalf of the Laws, was not an evil Speech; and he dare refer himself to the Protector's own Council, if this was a lawful Judicature.

The Lord President said, he was requir'd by the Court to enter his Refusal to plead; and he once more requir'd his Answer.

The Doctor said he was in a great Streight, and pray'd God to direct him what to do in this Case; and entreated them again, for he said he thought he could never be importunate enough, that they would take into their Consideration themselves and their Posterity; and all the People of *England*.

Page 812.

Then the President order'd that Passage in the Ordinance to be read, which says, *That in default of the Prisoner's Answer, the Court should proceed to Conviction and final Sentence, as in Cases of High-Treason, &c.*

Dr. Hewet said that was a printed Paper, indeed, which was call'd an Act of Parliament.

The President here interrupted him again, and said he must take him off, he had been often requir'd to answer, and having refus'd, he did, in the Name of the Court, require the Clerk to record his Refusal.

The Doctor's
Refusal to
plead recorded.

The Doctor would have reply'd again, but was order'd to be taken away; and John Mordant Esq; was order'd to be brought to the Bar.

Page 813.

The Tryal of the Honourable JOHN MORDANT Esq; before the High-Court of Justice, for High-Treason, on Tuesday the first of June 1658.

THE Prisoner being brought to the Bar, Mr. Attorney exhibited an Impeachment of High-Treason against him.

The Impeachment for High-Treason against the Protector.

The Impeachment set forth, " That John Mordant, of the Parish of Clement Danes in the County of Middlesex, intending to embroil the Commonwealth in new and intestine Wars, on the 30th of April, and divers other times since the 10th of October, 1656, as a false Traitor and Enemy to his Highness the Lord Protector and the Commonwealth, did, together with Henry Bishop, Hartgil Baron, Francis Mansel, and others their Accompllices, traiterously incite and endeavour to raise a new War against the Protector and Government establish'd, in order to subvert the same. And did also at the same Time and Place, declare, publish and promote Charles Stuart, eldest Son of the late King Charles, to be King of England, &c. and did traiterously hold Correspondence with him; all which Treasons the said John Mordant did traiterously declare by Overt-Act, viz. by consulting with John Stapely Esq; and Henry Mallory, how to effect the same; and did encourage the said John Stapely and Henry Mallory in the said Treasons, and deliver'd Commissions to several other Persons from the said Charles Stuart, for levying War against the Protector and Commonwealth, all which Treasons were laid to be contrary to the Statute in that Case made and provided. And the said Attorney, in behalf of the Protector and Commonwealth, did impeach him thereof, and pray'd that he might be put to answer, and such Tryal and Judgment might be had against the said John Mordant, as was agreeable to Law; and did aver that he was the same Person appointed by

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"his Highness and Council to be proceeded
"against.

Then the Clerk demanded of Mr. Mordant
whether *Guilty* or *Not Guilty*.

Mr. Mordant desir'd to hear their Commission
read; but was told he was try'd by a Commission
founded on an Act of Parliament.

Mr. Mordant said, the Act did not direct that
their Commission should not be read; and was
told that neither did the Act require it.

Then he desir'd the Act might be read; but
this also was refus'd.

Ld President. You are a young Gentleman, I
wish you would plead *Not Guilty*, or make an in-
genuous Confession.

Mr. Mordant. My Lord, this is the first time I
have been before a Court, I desire that my Reason
may be convinc'd; either assign me Council to
argue the Matter, and if Mr. Attorney can convince
my Council, I shall submit, or if Mr. Attorney will
say the Law does debar me hearing the Commis-
sion and the Act read, I refer it to the Judges, and
by their Opinions I will stand or fall.

Att. Gen. I wish this Gentleman doth not loose
those Advantages that are really intended him;
The Court is by Act of Parliament; and no Judi-
cature in *England* can require an Account of their
Proceedings: You are here impeach'd of a very
high Crime; it may be a Strain of Youth; the
first Step to Mercy is Confession.

Mr. Mordant. I desire my Reason may be con-
vinc'd. If the Council for the State will give it un-
der their Hands that this is Law, that I should be
excluded Jury and Council, and that I must not
know the Commission by which I am try'd, I will
proceed. Is there any Precedent of such a Proceed-
ing? besides, I humbly conceive, without all the
Commissioners are present I cannot be try'd.

He is refused
a Tryal by a
Jury, to have
Council, &c.

Lord President. All this was over-ruled this Morn-
ing in the Case of one who came before you to this
Bar: The *Quorum* of this Commission is seven-
teen.

Page 815.
He pleads Not
Guilty.

Mr. *Mordant*. Seeing I am over-ruled, tho' not convinc'd in my Reason, I shall demur to the Court, and plead *Not Guilty*.

Then Mr. *Lechmere* open'd the Charge, and the Witnesses were call'd, and first,

Mr. *John Stapely* was sworn.

Mr. *Attorney*. What Discourse had you with Mr. *Mordant* about the bringing in *Charles Stuart*?

Page 816.
Mr. *Stapely's*
Evidence of
Mr. *Mordant's*
making an In-
terest for King
Charles.

Mr. *John Stapely*. He did once tell me there was a Design of bringing in the King, and that the King had wrote to him to speak to his Friends to be ready to assist him when he came to *England*, and said the King would bring 7000 Men with him; and I have heard him say, That some Gentlemen had Commissions from the King, particularly two Gentlemen in *Surrey*; and I heard him say, That if there was a Necessity, *Surrey* Folks would come into *Sussex* to assist them.

Mr. *Attorney*. At what Time and Place, and who was by when you had these Discourses?

J. *Stapely*. There was no Body but us two; but he discours'd of it several times near his own House about a Year ago, and he told me of the Letter he receiv'd from beyond Sea about since Months since.

Mr. *Sol. Ellis*. Did he tell you it was the King that wrote to him, and it was just to assist him?

J. *Stapely*. I think I heard him say so, I cannot take my Oath of it.

Lord *President*. Did he tell you what considerable Persons were concern'd?

J. *Stapely*. I heard him mention Sir *Francis Vincent* and one *Brown*, and he said Sir *William Waller* desired him to speak to me about half a Year since; it was since the last Parliament.

Anthony Stapely sworn.

Mr. *Attorney*. What Discourse have you had with Mr. *Mordant* about *Charles Stuart*?

Anth. *Stapely*. In March last, on the Day those that had serv'd the King were banish'd the City, I was at the Half-Moon in *Aldersgate-street* with Captain *Mallory* and Mr. *Mordant*, and Mr. *Mordant* enquir'd of the Affairs in *Sussex*, and what Preparations there were in case the King of *Scots* should land; and I said there would not be an Appearance

answerable

answerable to his Expectation; and he said there was a considerable Strength ready to assist us in *Surrey*; and he said he had deliver'd out four Commissions, three of Horse, and one of Foot, to the best of my Remembrance, but I dare not swear it. And it was agreed that some of our County should meet Mr. Mordant at *Crawley* in *Surrey* upon the *Tuesday* following, to consider further how Things should be carried on as to *Surrey* and *Sussex*: I understood it was about the Business of the King, but it was not so express'd.

Mr. Mordant. I desire to know where I spoke this, *Anth. Stapely*. The first Discourse was at *Long-acre*,

Mr. Mordant. I desire to know if I did meet at the Place appointed.

Anth. Stapely. My Brother and Mr. Mallory did not meet him, because my Brother was sent for to *White-hall*.

Page 217.

Then the Council for the State produc'd Witnesses to prove that Capt. Mallory (whose Evidence they design'd to have made use of) was escap'd out of Prison, and desir'd that the Justice who took his Examination might depose what he said.

Then Mr. Scobel was sworn.

He depos'd that Capt. Mallory gave Information upon Oath before him and my Lord Goffe another Justice: That Captain *Anthony Stapely* and himself being at the *Half-moon-Tavern*, Mr. Stapely sent for Mr. Mordant off the *Change*; and when he came, *Anthony* presented his Brother and Capt. Mallory to Mr. Mordant as being in the Interest of *Charles Stuart*: That Mr. Mordant demanded of Captain Mallory in what Readiness the Horse that were to be raised in *Sussex* were, and said *Charles Stuart*, the King, was in a very good Posture, and there was daily Expectation of his coming over with Forces: And desired he might meet Capt. Mallory and Stapely, and some others of the County of *Sussex*, that they might confer together, and see how Affairs stood in relation to the two Counties of *Surrey* and *Sussex*, and that they might the better assist each other in the intended Insurrection; and a Place was agreed on to meet accordingly, but Mr. John Stapely being sent for to *Whitehall* it was prevented.

The Justice who took one of the Witnesses Examination, permitted to be an Evidence, the Witness having made his Escape.

Mr. Mordant's
Defence.

Page 218.

Then Mr. Mordant made some Observations on the Evidence: And first, he took Notice that Mr. *John Stapely*, the first Witness, did not swear he saw the Letter from *Charles Stuart*; and that he did not say what kind of Encouragement Mr. Mordant gave him, or that he promised him either Money or Preferment; that no Body was by when the Discourses he mention'd pass'd between them, and so he was but a single Evidence: That Mr. *Anth. Stapely* only swears, that to the best of his Remembrance Mr. Mordant told him he had three or four Commissions, and does not say he saw the Commissions, nor could he swear whether they were for Horse or Foot: That Mr. Mordant did not meet at the Place appointed, neither did he say why he was to meet, but in general about the intended Design; and that he only depos'd, That Mr. Mordant said he heard *Charles Stuart* would land with a considerable Party, but that he never mention'd with what Number of Horse or Foot: And gives no other Reason why Mr. Mordant did not meet at the Place appointed, than because his Brother was sent for to *White-ball*, which could not have prevented Mr. Mordant's meeting, or the Deponent's.

Mr. Sol. *Ellis* summon'd up the Evidence for the State, without making any considerable Observations upon it: After which Mr. Mordant observ'd further, that there was but one Witness that depos'd any Thing material, and was going on to offer some other Observations, but was interrupted by the Court; whereupon he only added, that he left his Life in their Hands, believing their Lordships would deal with him as an *English Freeman*.

Then the Prisoner was withdrawn, and the Court adjourn'd.

The 2d of June, 1658. The Court being set in *Westminster-hall*, Sir *Henry Slingsby*, Doctor *Hewet*, and Mr. Mordant, were brought to the Bar. And Mr. Attorney pray'd the Judgment of the Court as to Sir *Henry Slingsby* and Mr. Mordant; and as to Doctor *Hewet*, who had made no Defence, he demanded their Justice.

The

The President thereupon demanded of Sir *Henry Slingsby* what he could say why the Court should not proceed to Judgment.

Sir *Harry* answer'd he desir'd to be try'd by a Jury, that he look'd upon the Court as his Enemies, some of them having already sequestred and sold his Estate because he would not compound: And if he had compounded, the Times were so unsettled that he did not know but he might be compelled to compound over again: And thought it strange that they [his Enemies] should be both his Judge and Jury. ----- Here Sir *Harry* was interrupted by the President, and told that he could not be heard any more as to these Things; this was not a Time of Pleading, but a Time of Judgment, and he must hear the Court.

Page 319.

Then the President made a Speech: Wherein he tells the Prisoners, That it was a great Aggravation of the Sins of the *Egyptians*, that when God had declared himself by so many Signs and Wonders on Behalf of the *Israelites*, they should still pursue *Moses*: And who could be so much a Stranger to these Nations as to be ignorant what God had done among them by a Series of wonderful Providences so many Years together against a Party who were still hatching of Treasons and Rebellions amongst them? That it griev'd his Soul to think, after so many signal Providences, wherein God seem'd to declare himself as it were by Signs and Wonders, that their Hearts should be more hardned than the *Egyptians*, for they did at length see that the Lord fought against them; but the *Cavaliers*, tho' they could not but see that the Lord fought against them, that the Stars in their Courses fought against them, yet they would not see or confess it till their Destruction overtook them: That if these wonderful Providences would not move them, he thought national Considerations might deter them from these Practises; for *Charles Stuart* was in Confederacy with *Spain*, that great Popish Interest, against *England*. And it was very strange that a Protestant could assist such an Interest as this; yet such Protestants were the Prisoners: Then he repeated the Substance of the Evidence against Sir *Harry*. And as to what Sir *Harry* said that

The President's Speech to the Prisoners before Sentence.

He insists that the Wonders God had wrought for his Saints, might convince any one of the Justice of their Cause but a hardned Cavalier.

He insists that Popery must necessarily come in with *Charles Stuart*.

And that natural Allegiance was owing to the Protector.

Page 220.
Tweights against
the Family of
the Stuarts.

he was a Prisoner, and therefore was not bound by their Laws; He told him every Man ow'd a natural Allegiance to the supreme Magistrate; and that his not owning the Government was in itself a great Offence, and far from being an Excuse or Justification for Treason. And what, *added the President*, did you think would have become of the Protestant Interest, if you had succeeded, and *Charles Stuart* had come in? did you but look over the Declarations of Parliament since 1640, they would tell you what Family it was betray'd the Protestants in *France* when *Rochel* was taken; what Family it was that betray'd the Protestants in *Germany* and in the *Palatinate*, when a Peace was made with *Spain*? What did you think of that Family that could tolerate Popery for a Match with *Spain*? What then would that Family have done if they had regain'd the three Kingdoms once again?

As to *Dr. Hewet*, he said, When he consider'd him as a Minister, he knew not how to speak to him, for he had been always accusom'd to speak to a Minister as a Child speaks to his Father; but to speak to him as a Traitor he knew not how to do it, and therefore left it to the Officer who read the Sentence.

As to *Mr. Mordant*, He told him that God appear'd to him at this Time as he speaks to Sinners in *Jesus Christ*; for he did clear Sinners in *Jesus Christ* even when they were guilty, and so God clear'd him. He would not say he was guilty, but bid him ask his own Conscience whether he was not or no: Bid him bless God as long as he liv'd, and bless the Lord Protector, by whose Authority he was clear'd: And concluded, That tho' he had done speaking to the other two Gentlemen, yet he should never have done praying for them whilst they were alive.

Mr. Mordant
is acquitted.

Sentence pass'd
on *Sir Henry*
Slingsby and
Dr. Hewet as
Traitors.

Then the Clerk read the Sentence against *Sir Henry Slingsby* and *Dr. Hewet*, viz. That they should be drawn, hang'd, beheaded, quarter'd, &c. but the Protector remitted all the Sentence but the beheading.

And as to *Mr. Mordant*, the Court did adjudge that he was not guilty.

On Tuesday the 8th of June 1658, Sir Henry Slingsby and Dr. Hewet were beheaded on Tower-hill. They are beheaded.

The Tryals of the twenty-nine REGICIDES for High-Treason, which begun at the Old-Bailey, London, the 10th of October, 12 Car. 2. 1660. Page 833.

THE Lord Chief-Baron gave the Charge to the Grand-Jury the 9th of October at Hicks's Hall, wherein he tells them that the Statute 25 Ed. 3. was but declarative of the ancient Common Law, whereby it was High-Treason to compass or imagine the Death of the King: (That in no Case else the Imagination or Intention, without effecting the intended Design, was punishable by our Law); but here, if the Imagination, or Intention, manifested it self by Words, or otherwise, which the Law calls an Overt-Act, it was held to be High-Treason, and punish'd accordingly: And if the Imagination was Treason, what must they be guilty of who took upon them to judge, condemn, and put their King to Death? It having been declared and enacted by the Legislature, That no Authority, no single Person, no Community of Persons; neither the People collectively or representatively have any coercive Power over the King.

That in King Richard II's Time the Treason of the Spencers was their maintaining that all Homage and Allegiance was due to the King by Reason of his Crown; and if the King did not demean himself as he ought, since he could not be reform'd by Law, he might by sharp Imprisonment; but this had been adjudg'd to be Treason by two Acts of Parliament.

That our Law Books style the King the Lieutenant of God: That 1 Hen. 7. says that the King is immediate from God, and hath no Superior: That the Crown of England was imperial, and subject to no human Judicature; but notwithstanding the People had no coercive Power over the Person of the King; and it was a Maxim in our Law that the King could do no Wrong, and consequently could

The Lord Chief Baron's Charge to the Grand-Jury.

The Intention only punishable in Treason.

Of which Words may be an Overt Act. Page 834.

The People have no coercive Power over the Person of the King.

The Spencers Treason: The holding, that the King might be imprison'd and compell'd to submit to the Peoples Demands.

Page 835. Any Person executing an illegal Act, tho' by the King's Command, is punishable.

not

The King cannot in Person arrest any Man, or be arrested.

The King cannot sit in Judgment in his own Person, and his Possessions are subject to a Trial by Jury.

not be punish'd for any Wrong ; it did not follow that he was absolute, for if his Ministers did Wrong by his Command, they were punishable, (and the King could do but little Injury in his own Person.) And that as the King could not arrest a Man himself, so neither could his Person be arrested ; and if he arrest me by another Person, I have a Remedy against that Person.

That if the King claim'd a Right, he must sue for it according to Law ; his Possessions must be tried by Juries : And in all Actions between Party and Party the King could not judge in Person, but by his Judges, who were upon their Oaths ; so that tho' this was a Monarchy, yet the People, as to their Lives, Liberties and Properties, were as well secured as the King. And that the sharing the Government would not at all promote the Liberty or Advantage of the People : And he appeal'd to the Audience, If when the Fattness of the Olive was laid aside, and they were govern'd by Brambles, they did not only tear their Skin, but tore their very Flesh to the Bone.

That it was horrible to think that a few Members of the Commons-House, who had sworn to defend the King and his Heirs against all Conspiracies and Attempts whatsoever, should assume to themselves an Authority to erect a Court of Justice, and by Colour thereof sentence their King, their Sovereign Liege-Lord, and put him to Death, *even as their King*, at Noon-Day, before the Gates of his own Palace. That this was such an Aggravation of Villany, as no Story, or fabulous Romance could parallel : And if any one should endeavour to excuse himself as acting under such a pretended Authority, that would be but an Addition of his Guilt. He tells the Grand-Jury, That they were now to enquire of Blood, of Royal Blood, of Sacred Blood, Blood like that of the Saints under the Altar, crying, *How long Lord, &c.* That that Blood cry'd for Vengeance, and would not be appeas'd without a bloody Sacrifice : That he who favours the Guilt of Blood, takes it upon himself ; and concluded, that they would do well to observe that the *Jews*, who said, *Let his Blood be on us and our Children*, their Posterity felt the Effects of it at this Day.

The

The Witnesses being sworn, the Grand-Jury found the Bill.

The 10th of October, 1660, Sir John Robinson, Lieutenant of the Tower, in Pursuance of a Warrant for that Purpose, deliver'd the Prisoners to the Sheriff, they were brought to Newgate, and from thence to their Arraignment at the Old-Bailey the same Day ; where the Commission of Oyer and Terminer being read, Sir Hardress Waller, Colonel Thomas Harrison, and Mr. Heveningham were set to the Bar, and the Indictment was read to them.

The Prisoners brought from the Tower to Newgate.

The Treason laid in the Indictment was the compassing and imagining the Death of the late King Charles ; and the sitting in Judgment, and signing the Warrant for the Execution of his Majesty, &c. were laid as Overt Acts of their treasonable Imagination.

The Indictment.

Sir Hardress Waller being arraign'd, and ask'd if he was Guilty or not Guilty ; he would have pleaded Guilty to Part, and Not guilty to the rest of the Charge ; but being told he must either plead Guilty, or not Guilty to the Whole, he at length pleaded Guilty.

They are severally arraign'd. Page 337.

Colonel Thomas Harrison being arraign'd, insisted also, that he might answer in his own Words ; but was told he must answer in the Words the Law prescrib'd ; whereupon he at last pleaded Not Guilty, and was with much ado prevail'd upon to say he would be try'd by God and his Country, tho' he insisted much that they were but vain Words.

Harrison arraign'd.

Page 338.

Mr. Heveningham being arraign'd, without any Hesitation pleaded Not Guilty, and put himself upon his Country in the usual Form.

Heveningham arraign'd.

Then Isaac Pennington Esq; Henry Marten Esq; Gilbert Millington Gent. Robert Titchbourne Esq; Owen Roe Esq; and Robert Lilburn Gent. were set to the Bar, and the Indictment read to them.

Isaac Pennington Esq; being arraign'd, pleaded Not Guilty, and put himself upon his Country.

Pennington arraign'd.

Henry Marten Esq; being arraign'd, desir'd he might have the Benefit of the Act of Oblivion ; but was told, If he demanded the Benefit of that Act, it amounted to a Confession that he was guilty, and that he was excepted out of the Act : The Prisoner answer'd, his Name was Marten, and not Martin,

Marten arraign'd.

sin, as in the Indictment; but was told that was not such a Misnomer as would avail him, the Sound being much the same, and that if he should be overrul'd, it would be fatal to him; whereupon he pleaded *Not Guilty*, and put himself upon his Country.

Millington arraign'd.
Page 839.

Gilbert Millington being arraign'd, would have pleaded *Guilty to Part*, and *Not Guilty to Part*; but that not being accepted, he pleaded *Not Guilty*.

Titchbourne arraign'd.

Robert Titchbourne being arraign'd, desir'd Council; which being refus'd, he said, That in the Manner and Form he stood indicted he was *Not Guilty*.

Rowe arraign'd.

Owen Rowe being arraign'd, answer'd also, That in the Manner and Form he stood indicted he was *Not Guilty*.

Lilburn arraign'd.

Robert Lilburn being arraign'd, pleaded *Not Guilty* also in like Manner.

Then *Adrian Scroop*, *John Carew*, *John Jones*, *Thomas Scot*, *Gregory Clement*, and *John Cook*, were set to the Bar, and the Indictment was read to them.

Scroop arraign'd.

Adrian Scroop being arraign'd; but being interrupted, he pleaded *Not Guilty*.

Carew arraign'd.

John Carew being arraign'd, after a Saving to our Lord *Jesus Christ his Right to the Government of these Kingdoms*, pleaded *Not Guilty*.

Jones arraign'd.

John Jones being arraign'd, pleaded *Not Guilty*.

Scot arraign'd.
Page 840.

Thomas Scot being arraign'd, said, Because he could not call the Thing Treason, he pleaded *Not Guilty*.

Clement arraign'd.

Gregory Clement being arraign'd, pleaded *Not Guilty*.

Cook arraign'd.

John Cook being arraign'd, pleaded *Not Guilty*.

Then *Edmund Harvey*, *Henry Smith*, *John Downs*, *Vincent Porter*, and *Augustine Garland*, were set to the Bar, and the Indictment was read to them.

Harvey arraign'd.

Edmund Harvey being arraign'd, pleaded *Not Guilty*.

Smith arraign'd.

Henry Smith,

Downs arraign'd.

John Downs,

Porter arraign'd.

Vincent Porter, and

Garland arraign'd.

Augustine Garland,

} being arraign'd, pleaded
} *Not Guilty*.

Then *George Fleetwood*, *Simon Meyn*, *James Temple*, *Peter Temple*, *Thomas Wait*, *Hugh Peters*, *Francis Hacker*, and *Daniel Axtel* were set to the Bar, and the Indictment was read to them.

George

George Fleetwood being arraign'd, pleaded *Guilty*, and was set aside.

Fleetwood arraign'd.

Simon Meyn, } being arraign'd, pleaded *Not Guilty*.
James Temple and }
Peter Temple. }

Meyn arraign'd.
Temple arraign'd.

Thomas Wait would have distinguish'd his Case from the rest, but at length pleaded *Not Guilty*.

Temple Peter arraign'd.

Hugh Peters being arraign'd, pleaded *Not Guilty*, and desir'd to be try'd by the Word of God ; but by the Direction of the Court he afterwards said by God and the Country.

Wait arraign'd.
Peters arraign'd.
Page 841.

Daniel Axtel being arraign'd, objected to the Jurisdiction of the Court, and said, If the Indictment was for putting the King to Death, it was done by Act of Parliament, and no inferior Court ought to judge of that Matter : But he was prevail'd upon at last to plead *Not Guilty*, and put himself upon his Country.

Axtel arraign'd.

Then the Court adjourn'd till the next Day.

Octob. 11, 1660, the Court being set, Thomas Harrison, Adrian Seroop, John Carew, John Jones, Gregory Clement, and Thomas Scot, were set to the Bar. But not agreeing in their Challenges,

First Mr. Harrison was brought upon his Tryal, who having challeng'd thirty-five peremptorily, at length the following Gentlemen were sworn :

Page 842.
Mr. Harrison brought upon his Tryal.

Sir Tho. Allen,	— Bell,
John Lisle,	Samuel Harris,
Thomas Franklin,	Thomas Snow,
Richard Nichol,	John Nichol,
Samuel Greenhill,	Thomas Morris,
Edward Rolph,	George Pickering.

The Jury being sworn and charg'd with the Prisoner, Mr. Kelynge open'd the Indictment.

Then Sir Heneage Finch, his Majesty's Solicitor-General, shew'd the aggravating Circumstances this Crime was attended with : He said that they this Day brought before their Lordships into Judgment the Murderers of a King, and that the very Thoughts of such an Attempt had in all Ages and Nations been held to be a most unpardonable Treason, and that to doubt or hesitate in Point of Allegiance, was direct

Sir Hen. Finch aggravates the Charge

The Imagination is the Treason, the Overt Acts but the Evidence of it.

If any of the Overt Acts laid in the Indictment be prov'd, it maintains the Indictment.

Page 444.

An Account of the Number of the Regicides, and what became of them.

direct Treason and Apostacy. And Kings, who were God's Vicegerents on Earth, had thus far a kind of Resemblance of the Divine Majesty, that their Subjects stood accountable to them for the very Thoughts of their Hearts. That it was the Thoughts of the Heart that made the Treason, the Overt Act was but an Evidence of it: And the Reason of this Care and Caution was, because on the Prince's Life depended the Preservation of our Religion and Government, and every Thing that was valuable, as had been lately verified by sad Experience, when that blessed King, whose Blood they were then making Inquisition for, was untimely taken away, for then Religion and Justice lay buried in the same Grave with him; nor did they revive till the miraculous Return of his present Majesty. He said the Indictment was for compassing the King's Death; the sitting upon him, judging and killing him, were but so many Overt Acts; and if they prov'd any one of them against the Prisoner, he was as guilty in Law as if he had given the fatal Stroke: Nay, if they could prove an Overt Act not laid in the Indictment, such as the crying out Justice, Justice! or preaching to go on in this pious Work, or perpetrate any other Act of all that Catalogue of Villanies for which their Story would be for ever infamous; this might be given in Evidence to prove the compassing and imagining the King's Death. Then he recites the Transactions between the King and Parliament in 1648, and shews how most of the House were turn'd out by the Army, and a very small Number left, who took upon them to erect the High Court of Justice. *Here he gives a brief Relation of the Proceedings of that Court, and the dismal Consequences of their fatal Sentence on the King.* He goes on and says, That the Judges, Officers, and immediate Actors in this pretended Court were in Number eighty; of whom twenty-four or twenty-five were dead and gone to their Place; six or seven who were thought to have least Malice had their Lives spar'd, eighteen or nineteen were fled from Justice; and wander'd to and fro about the World with the Mark of Cain upon them, and a perpetual trembling, lest every Eye that saw them, and every Hand that met them, should fall upon them;

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them ; and that twenty nine of these Regicides did now expect the Justice of the Court, and among them, the first who was brought to the Bar was *Harrison* ; who well deserv'd to be the first, for he (if any Person left alive might) ought to be stil'd the Conductor and Leader in all this bloody Work : That it was he who brought the King from *Windsor*, nor did he then shew him common Civility ; That he sate upon the King, sentenc'd him, and sign'd the bloody Warrant for his Execution, and by his De-meanor express'd a more than ordinary Malice.

Sir *Edward Turner* having also observ'd the atrocious Quality of this Crime, the King's Council proceeded to call their Witnesses ; and first,

Page 245.

Mr. George Masterfon was sworn :

He depos'd, That he saw the Prisoner, *Mr. Thomas Harrison*, sit in that call'd the High Court of Justice upon the 27th of *January* 1648, and that he saw *Harrison* stand up to express his Assent, (as the Deponent understood) to the Sentence which the Clerk then read, and said was the Sentence of the whole Court.

The Witnesses call'd.

Mr. William Clerk was call'd :

He depos'd, That he saw the Prisoner *Harrison* sit several Times in the Court of Justice, particularly on the 23d and on the 27th of *January* ; which last was the Day of the Sentence. That the Members of the Court all rose up, but he did not then take particular Notice of the Prisoner.

Mr. Stephen Kirk was call'd :

He depos'd, That he took a Note of all that were present in the Court of Justice the 27th of *January*, being the Day of the Sentence, and the Prisoner *Harrison* was then present, and all the Members stood up after the reading the Sentence, (as the Deponent thought) to express their Assent to it.

Mr. James Natley was call'd :

He depos'd, That he saw the Prisoner *Harrison* sit in the Court of Justice as he remembred four several Days, and by his Book he found he was there the 27th, being the Day of the Sentence ; and that some few Days before that there was a Committee of the Members sate in the Exchequer-Chamber, among whom was *Harrison* the Prisoner ; That they were debating

Page 246.

*Harrison advises
to blacken the
King in their
Charge against
him.*

debating concerning the altering and contracting the Impeachment against the King; and the Deponent heard *Harrison* say; *Gentlemen, It will be good for us to blacken him what we can; pray let us blacken him; or to that purpose: And that he heard Harrison* telling the other Members, that when he was bringing the King to *London*, as he was in the Coach with him, the King ask'd, what they intended to do with him, whether to murder him or no; and *Harrison* said he reply'd, *There was no Intention to kill him; they had no such Thoughts, but the Lord hath reserv'd you for a publick Example of Justice.*

Mr. Coymore was call'd.

He depos'd, That he saw *Harrison* the Prisoner sit in the Court of Justice once or twice; and that he sat as one of the Judges, and not as a Spectator.

Lord Newburgh sworn.

He depos'd, That *Harrison* commanded the Party which brought the King from *Hurst-Castle* to *London*; and that they call'd at his Majesty's Lodge of *Bagshot* (where the Deponent then liv'd) by the Way; and when his Majesty went to Dinner there, *Harrison* gave Orders for placing the Centries; and when they set forward for *Windſor*, *Harrison* order'd several of his Officers to ride close to his Majesty, lest he should make his Escape.

Page 247.

Then a Warrant for summoning the High-Court of Justice, and another Warrant for the Execution of his Majesty, sign'd by the Prisoner *Harrison*, were produc'd in Court, and his Hand was prov'd to both by *Mr. Kirk* and *Mr. Farrington*; and *Harrison* afterwards acknowledg'd the Hand to be his in both the Instruments, and they were read in Court. *Mr. Windham* sum'd up the Evidence for the King, and as he concluded, the Audience hum'd, which the Chief Baron told them was not at all becoming the Gravity of that Court, it was more fit for a Stage-Play than a Court of Justice.

Page 248.

*Mr. Harrison's
Defence.*

Then *Mr. Harrison* enter'd upon his Defence: He said, that the Matter he was charg'd with was not done in a Corner, the Sound of it had been in most Nations; and he believ'd the Hearts of some had felt the Terrors of that Presence of God that was with

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with his Servants in those Days, however it had seem'd good to God to suffer this Turn to come upon them. That he had earnestly desir'd of God, the Searcher of Hearts, if he had done amiss, that he might receive of him some Convictions upon his Conscience; but that tho' he had sought it with Tears many a time, of that God, in respect of whom they and all Nations were but as a Drop of the Bucket, to that Moment he had rather receiv'd Assurance of the Justice of what he had done; and he believ'd, e'er long, it would be made known from Heaven, there was more of God in it than Men were aware of: That their Lordships knew what a Contest there had been for many Years in these Nations, and how active many upon the Bench had been — *Here the Court check'd him for making Reflections; and then he went on and said,* That what he had done was out of Conscience to the Lord; that he might be mistaken in some things, but he always did according to the best of his Understanding, and made the reveal'd Will of God in the holy Scriptures his Guide. And he conceiv'd, that what had been done by Authority of Parliament, no other Jurisdiction could meddle with; that they were the Supreme Authority, and those who acted under them could not be question'd by any Power less than that; and whereas it had been said they usurp'd that Power, he said it was rather done in the Fear of the Lord. *Here he was interrupted again, and told that such things were not fit to be vented in an Assembly of Christians, to make God the Author of their damnable Treasons.* He went on and said, That what he had done by the Power and Authority of Parliament he was not to be question'd for, otherwise they were in a miserable Condition, bound to obey those that were in Authority, and yet to be punish'd when they obey'd. And he desir'd Council to this Point; he said the Matter concern'd all his Country-men; that he had several Precedents to cite; and that in Richard the Second's Time, some having been question'd for what had been done in Parliament, their Lordships knew what follow'd.

He justifies the Fact as approv'd by Heaven.

He excepts to the Jurisdiction of the Court.

And says he acted by Authority of Parliament, for which he was not to be question'd here.

The TRIALS of

The Court told Mr. *Harrison*, if there were any thing of Difficulty, they should and ought to be Council for him; but that neither one or both Houses of Parliament, the People collectively or representatively, had any colour for any coercive Power over their King, much less those few Members of the Commons, after they had purg'd their House of the corrupt Majority, as they call'd it. And Mr. *Annesly* remember'd the Prisoner that he was the Man who forcibly remov'd that Parliament's Guard, and plac'd other Guards at the Door of the House, who threatned and insulted the Members; and after the House had resolv'd, notwithstanding, that the Treaty in the *Isle of Wight* was a ground for Peace, and sent their Resolution up to the Lords, when the House adjourn'd, Forces were drawn down to the House of Commons, and none suffer'd to come in but those they pleas'd; and all who profess'd any Duty to the King, were seiz'd on by *Harrison* and his Fellows. That then he, and a small remainder of the House declar'd against the Vote, which had been pass'd for a Treaty with his Majesty; and took upon them to exercise Sovereign Authority, and under them he would screen himself, as having acted by Authority of Parliament; when the Majority even of the House of Commons disavow'd their Proceedings; tho', had they been entire, they could have had no Pretence to the Supreme Authority.

Harrison insisted, that what was done by one Estate of Parliament, was not to be question'd in this Court, they were not Judges of the Force.

The Court answer'd, It was not done by one Estate, they were not an eighth Part of the Commons, they were but a Company of Men supported by the Sword; and bid him not abuse the People, by pretending that what he did was done by the Supreme Power. And the Court observ'd, that the Sum of what he had said, was no more than that he acknowledg'd he had done the Fact, justified it, and would do it again, which was a new Treason; that the House of Commons never, till now, pretended to a Jurisdiction over any but their own Members, much less over the King and House of Lords; and

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and therefore his Plea ought to be over-rul'd as illegal and wicked; and added, that he had eas'd the Jury of some Trouble, having confess'd the Fact.

Harrison reply'd, That notwithstanding so many of the Learned had given their Opinion that the Kings of *England* were not accountable to the Parliament, the Lords and Commons had declar'd, in the beginning of the War, that the King's beginning War upon them — *Here the Court interrupted him*; but he went on and said, *His setting up his Standard against his People* — The Court told him, this was not to be suffer'd, and did not belong to him.

Page 851.

Harrison said, this did belong to him; and he would have abhor'd to have call'd him to an Account, had not the Blood of Englishmen that had been shed — The Court again interrupted him, and bid him keep to the Business.

Harrison went on, and said, as to what had been sworn against him, of his advising to blacken the King, it was all false; he said there was some Discourse between his Majesty and him, on a Report of his coming to the Isle of *Wight* to kill him, and he told his Majesty that he abhor'd the Thoughts of it; and that he did not remember any hard Usage towards his Majesty.

The Court told him the Jury must consider of the Witnesses Oath and his Affirmation to the contrary; and that if he had nothing further to offer, they should direct the Jury.

Mr. Harrison again insisted, that what he had done was by the Supreme Authority, and appeal'd to the Consciences of the Court if they could question him for it.

The Court answer'd, they should do what was just, and what they could answer before the Tribunal of God.

Here Harrison would have produc'd some Ordinances of Parliament to have justified his Actions, but was told by the Court, he had already had the Opinion of the Court concerning that Authority.

Then the Lord Chief-Baron directed the Jury, and told them, that if any one of the Overt-Acts,

The Lord Chief-Baron directs the Jury. Any one Overt-Act prov'd is sufficient.

Page 852.

An Endeavour
to imprison the
King an Overt-
Act of compass-
sing his Death.

Harrison con-
victed.

Judgment
against him.

Scroop's Tryal.

Page 853.

The Evidence
against him.

laid in the Indictment, was prov'd, they ought to find the Prisoner *Guilty*, such as the *consulting, proposing, sitting, or sentencing the King*; but that here they were not only all prov'd by Witneses, but by the Prisoner's Confession; and he observ'd that the Prisoner had the King in Custody, and brought him Prisoner from *Hurst-Castle*, without any Authority, even from those whom he call'd the Supreme Power; and that if a Man go about to imprison the King, that had been often adjudg'd an Evidence of imagining and compassing the King's Death; that the Prisoner was so far from denying, that he justified his Actions; and that the Evidence was so clear and pregnant, that he need add nothing more.

Then the Jury, without going out, found the Prisoner, *Thomas Harrison*, *Guilty*.

And the King's Council desiring that Judgment might be forthwith pronounc'd against him; for that his Behaviour had been such, that he did not deserve to be repriev'd so long as the Sessions was like to last; the Lord Chief-Baron accordingly pronounc'd Judgment against him as a Traitor; after which the Court adjourn'd.

October 12, 1660, *Adrian Scroop* was brought upon his Tryal, and the Jurors being call'd, after the Prisoner had challeng'd several, twelve Gentlemen were sworn and charg'd with him.

Mr. *Solicitor* open'd the Indictment, and the Witneses were call'd; and first,

Mr. *Masterfon* was sworn.

He depos'd, That he saw the Prisoner, *Adrian Scroop*, sit as a Judge two several Days, in that which was call'd the High-Court of Justice; that the last Day was the 27th of *January*, when the Sentence having been read, and declar'd to be the Judgment of the whole Court, he saw Mr. *Scroop* (with the rest of the Judges) stand up, as he apprehended it, to express his Assent. And Mr. *Scroop* asking the Deponent whereabouts he sat, the Deponent answer'd, that, to the best of his Remembrance, he sat on the second Seat on the left Hand of *Bradshaw*; and added, that tho' he had never

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seen Mr. *Scroop* before, he had seen him at Committee since twenty times.

Mr. *Clark* being sworn, and deposing, that he saw Mr. *Scroop* sit in the High-Court of Justice; Mr. *Scroop* said it was needless to examine any more Witnesses to that Point, for he acknowledg'd he sat in the Court of Justice, but would not confess he stood up as assenting to the Sentence.

Mr. *Clark* depos'd, That, to his Apprehension, they all stood up, he did not observe any one sit.

Mr. *Carr* was call'd.

He depos'd, That he saw Mr. *Scroop* in the Court of Justice the 22d, 23d and 27th of January 1648, that he heard the Members call'd over, and Mr. *Scroop* answer'd to his Name, but he did not remember whereabouts Mr. *Scroop* sat.

Mr. *Kirk* was call'd.

He depos'd, That he saw Mr. *Scroop* sitting in the High-Court of Justice the 27th of January 1648, and he took particular Notice of it, not expecting him there; and Mr. *Scroop* asking him what Employment he had there, the Deponent answer'd, he was but a Spectator and took Notes.

The Court told Mr. *Scroop* he ought not to reflect on the Witnesses.

Mr. *Scroop* answer'd, if he had an Employment, he was not fit to be a Witness against him; but the Court told him he was the fitter.

Mr. *Coytmore* sworn.

He depos'd, That he saw the Prisoner, Mr. *Scroop*, sit once or twice in the High-Court of Justice.

Mr. *Nutley* was sworn.

He depos'd, That he heard Mr. *Scroop* answer to his Name as one of the Judges in the High-Court of Justice.

Mr. *Baker* was sworn.

He depos'd, That he heard Mr. *Scroop* answer to his Name in the High-Court of Justice the 23d of January.

Then the Warrants for summoning the High-Court of Justice, and the Warrant for the King's Execution

Execution being shewn Mr. *Scroop*, he acknowledg'd his Hand was set to both.

Major-General *Brown*, the Lord Mayor elect, sworn.

He depos'd, That since the King came in, the Deponent saying to the Prisoner Mr. *Scroop*, what a sad Condition the Nation was reduc'd to by the Murder of the King, Mr. *Scroop* said, *some are of one Opinion and some of another*; and the Deponent asking Mr. *Scroop* if he thought it well done, Mr. *Scroop* answer'd, *he would not make the Deponent his Confessor*; from whence Mr. *Solicitor* observ'd, that neither Time nor the Hand of God appearing in this Business, nor the Condition he was in, could bring the Prisoner to any Sense or Sorrow for his Offence.

Mr. *Scroop's* Defence.

That he acted under the then Supreme Authority.

Page 216.

Mr. *Scroop* said in his Defence, that he was not of the Parliament which erected the High-Court of Justice; and as for what that Court had done, 'twas done by a Commission from the Parliament, who were then the Supreme Authority of the Nation, and generally submitted to by the Nation as such; that he having receiv'd a Command from that Authority, what he did was in Obedience to that Authority; and he desir'd he might be allow'd Time and Council to argue the Matter of Law; that what he said was not to justify himself, but in Justification of the Fact.

The Lord Chief-Baron answer'd, That there was no need of Council in what he had offer'd; that his Defence tended rather to aggravate than extenuate his Crime; that he, as well as others, was mistaken in the Word *Parliament*; that there was not one Precedent where the House of Commons had taken upon them Legislative Power, and to make such an Act as this, for the erecting a Court of Justice; and besides, there was but 46 even of the Commons that sat, 240 being excluded; so that they had no Pretence to be call'd a House. That the House of Lords were then in being, and rejected this pretended Act, under which they would shelter themselves; and of the 46 Members that remain'd in the Commons House, not more than 23 or 26 voted for it, and these Men

But 46 Members in the House when the Act for erecting the High-Court of Justice pass'd.

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had taken the Oaths of Allegiance and Supremacy, and sworn to defend the King, his Crown and Rights against all Persons whatever; (and not only against the Pope, as they had interpreted it) for the Words of the Oath were, *or otherwise*; that they had acknowledg'd in the Oath of Supremacy, that the King was the Supreme Governor of these Nations, and sworn that they would maintain all the Privileges, Immunities, and Preheminences annex'd to the imperial Crown of this Realm; and now to say, that Men, by breaking through all the Ties and Obligations of Allegiance, could gain any lawful Authority, he that justified it must justify it against the Light of Conscience and all Laws. As to his acting by Command, where a Court exceeds its Jurisdiction, he that obeys the Command is punishable; as where the Common-Pleas shall condemn a Man in an Appeal of Murder, he that executes their Sentence is guilty of Murder; and where Men will assume an Authority never heard of before, those who countenance their Acts, by obeying them, can never plead that as an Excuse, such a Plea is but an Aggravation of the Crime.

Whoever obeys a Court, when it exceeds its Jurisdiction, is punishable.

Mr. *Scroop* beg'd leave to say, that if he had been missed he was not the only Person; and altho' it did not become him to say so, he saw a great many Faces that were missed as well as himself; and he hop'd an Error of Judgment would not be accounted Malice, or an Error of the Will; and that in truth he never went to the Work with a malicious Heart, he never bore Malice to his late Majesty.

The Lord Chief-Baron said, that might be some kind of Excuse to God, but in Law the Fact itself implied Malice.

Mr. *Scroop* added, that he did not remember the Words my Lord Mayor elect had sworn; and he was sure he never intended to justify the Fact by any Discourse he had with him, however he was understood, tho' he found that very Discourse was the Occasion of his being excepted out of the Act of Indemnity; that he was not excepted when he came in upon the Proclamation, and never was determin'd to be excepted till the very last Day of passing.

Page 857.

passing that Act; that his was the Case of many other Gentlemen; and desir'd the Court would take his Case into Consideration as they would their own, and pray'd God to direct them.

The Chief.
Baron directs
the Jury.

Then the Lord Chief-Baron directed the Jury, and told them, that it was the imagining and compassing the King's Death that was the Treason; and the Facts laid in the Indictment were the Overt-Acts of that Treason; and that if any one of them were prov'd, it would support the Indictment; but in this Case they had been all prov'd so plainly, that there was no occasion to go from the Bar.

Scroop convicted.

The Jury having consulted a short time together, found Mr. *Scroop* Guilty.

Page 218.
Carew's Trial.

Then Mr. *John Carew* was brought upon his Tryal, and the Jurors being call'd, Mr. *Carew* challeng'd 23. At length 12 Gentlemen being sworn and charg'd with the Prisoner, Sir *Edward Turner* open'd the Indictment, and the King's Witnesses being call'd,

The Evidence
against him.

Mr. *Masterfon*, Mr. *Clark*, and Mr. *Kirk* were sworn.

They depos'd, That they saw the Prisoner sit several Days in the High-Court of Justice, as one of the King's Judges, and particularly on the 27th of *January*, being the Day of the Sentence; and *Kirk* added, that he saw the Prisoner rise up as assenting to the Sentence.

Then the two Warrants for the summoning the High-Court of Justice, and for the King's Execution, were produc'd; and Mr. *Kirk* and Mr. *Farrington* depos'd, that they knew the Prisoner Mr. *Scroop's* Hand, and they believ'd that his Name, which was set to each Warrant, was his own Hand writing; and *Kirk* depos'd further, that Mr. *Carew* was a Member of the Long Parliament.

Page 219.
Carew's Defence.

Mr. *Carew* said in his Defence, That whereas it was charg'd he had not the Fear of God before his Eyes, but was mov'd by the Devil; and that what he had done was with a traiterous, malicious and devilish Heart; he could say, in the Presence of the Lord, who was the Searcher of all Hearts, that what he had done was in the Fear of the Lord, and in Obedience to his holy and righteous Laws.

He

He said when his Name was first inserted among those who were to constitute the High-Court of Justice, he struck it out, thinking it a thing of great weight, and that there were Men enough of greater Experience than himself, tho' he was satisfy'd of the Authority; that his Name being put in again, he confess'd he did consent to be one, *First*, In Obedience to the Lord: *Secondly*, In Obedience to that which was then the Supreme Authority of the Nation; that the Matter in question had been controverted in the Face of the whole World, in several Nations, and the Lord had given an Answer upon solemn Appeals to these things; *Then he would have enter'd into the Grounds and Reasons of the War between the King and Parliament; but he was interrupted by the Court, and told, that they must not hear him make Discourses in Justification of a horrid and notorious Treason; and as to his having acted in the Fear of the Lord, they bid him remember that the Devil appear'd sometimes in the Habit of an Angel of Light; that he must not be suffer'd to cast in Bones of Contention, to revive those Differences which were but just laid asleep. That this Treason had no relation to what was done by the Lords and Commons in the beginning of the War; the Act under which he pretended to screen himself, was not made by the Authority of either House; there were but 45 of the Commons who sat in the House when 'twas debated; and not more than 26 who voted it; that this could never be understood by any one to be an Act of Parliament, being no more than an Order of some few of the Commons, after they had forcibly excluded a great Majority.*

He justifies the Fact, and insists that the Cause was approv'd by Heaven.

Page 260.

Mr. Carew acknowledg'd his Hand was to the Warrant for summoning the High-Court of Justice, and to the other Warrant for the King's Execution; but still insisted that they acted under the then Supreme Authority of the Nation, and said, since they would not suffer him to open the true Nature of these Things, and the Grounds he went on, which satisfied his own Conscience that what he did was from the Lord; he left his Cause to the Jury, adding again, that the Authority he spoke of

Page 261.

was

was a rightful Authority; it was the Supreme Power, and it was well known what they were; and concluded, that he had desir'd to speak the Words of Truth and Soberness, but had been hinder'd.

The Lord Chief-Baron, in his Directions to the Jury, told them the Treason was so fully prov'd, as well by Witneses as the Prisoner's Confession, that they need not stir from the Bar; whereupon the Jury laying their Heads together a little time, found the Prisoner, Mr. *Carew*, Guilty, without going from the Bar; and then the Court adjourn'd.

Carew convicted.

Scot's Tryal.

Page 262.

October 12, 1660. The Court being set, *Thomas Scot* was brought to the Bar, and the Jurors were call'd, of whom the Prisoner challeng'd several; and a Jury being at length sworn, and Mr. Solicitor having open'd the Indictment, the King's Witneses were call'd; and first, Mr. *Masterfon*, Mr. *Kirk*, and Mr. *Clark*, were sworn.

They depos'd, That they saw the Prisoner, Mr. *Scot*, sit several Days as a Judge in the High-Court of Justice; and particularly, on the 27th of January, when all the Court stood up, as expressing their Assent to the Sentence against his late Majesty.

Mr. *Farrington* and Mr. *Nutley* were sworn.

They depos'd, That they knew Mr. *Scot's* Hand; and that they believ'd Mr. *Scot's* Name, which was subscrib'd to the Warrant for the Execution of his Majesty, was Mr. *Scot's* Hand writing.

Sir *Theophilus Biddolph* sworn.

He depos'd, That he heard Mr. *Scot*, the Prisoner, say, in *Richard's* Parliament, January or February was twelve-month, that he sat as one of the Judges on the late King; and he was so far from repenting of it, that he desir'd this Inscription might be upon his Tombstone, viz. *Here lies Thomas Scot, who adjudge'd to Death the late King.*

Colonel *Coply* was sworn.

He also depos'd, That he heard the Prisoner in April last use the same Expression, desiring such an In-

He glories in the Fact, and desires it may be inscrib'd on his Tomb.

Inscription on his Tombstone ; and said he hop'd he should never repent of the King's Death.

The Lord Mayor elect sworn.

He depos'd, That upon the last Day of the sitting of the Parliament, a little before his Majesty's Return, Mr. Scot seeing the House must break, said, *Their Heads must be laid to the Block if there was a new Parliament ; I confess (said he) I had a Hand in putting the King to Death ; and I desire all the World may take Notice of it ; and I desire, when I die, it may be written on my Tomb ; I do not repent of any thing I have done, if it were to do I could do it again.*

William Lenthall Esq; sworn.

He depos'd, That the House being about to dissolve itself, Mr. Scot made a Speech, justifying the putting the King to Death, but he did not remember the particular Expressions mention'd by the other Witnesses.

The Lord Mayor elect depos'd further, That Mr. Scot concluded his Speech in the House thus. *Being it is your Pleasure to have it so (the House dissolved) I know not how to hinder it ; but when that is done, I know not where to hide this hated Head of mine.*

Mr. Baker was sworn.

He depos'd, That he perfectly remember'd that Mr. Scot sat in the High-Court of Justice two Rows above Mr. Bradshaw on his left Hand ; that the Deponent having occasion to discourse with Mr. Scot, in the time that Richard's Parliament sat, Mr. Scot said, *he had cut off one Tyrant's Head, and he hop'd to cut off another.*

Mr. Scot, in his Defence, insisted, that for what Words he had spoken in Parliament, he was not to answer in an inferior Court, it was a Breach of Privilege. Scot's Defence.

The Council answer'd, there was no Privilege of Parliament for Treason ; and besides, the Parliament where they were spoken was Richard's Parliament, whom he did not own as a Parliament.

Mr. Scot reply'd, he thought that Convention of the People ought to have the Privilege of Parliament as well as another ; and that tho' one might be secur'd in Case of Treason, till the Parliament was

was acquainted with it, yet he could not be finally concluded till the Parliament had heard it.

For Treason and Felony there is Privilege of Parliament.

The Lord Chief-Baron told the Prisoner, That for Treason or Felony committed even in the Parliament-House, they were not to be tried in Parliament, but according to the Rule of Common-Law; and put him in Mind that this was far from being the only thing in his Case: There was other Evidence of his compassing and imagining the King's Death.

Page 864.

He endeavours to prove that the Rump Parliament were a rightful and lawful Authority.

Mr. Scot proceeded in his Defence, and said, *He never said, He hop'd he should never repent of the King's Death*, as had been sworn; but on the contrary, the thing having been well spoken of by some, and ill by others, he had often, by Prayers and Tears, besought the Lord, that if there were any Iniquity in it he would shew it him: And added, that it was by Command and Authority of a Parliamentary Power that he sat as one of the King's Judges, and this would justify him whatever the Nature of the Fact was: And that this Court could not take Cognizance whether they were a Parliament or no; and he did not know but it might be as lawful for them to make Laws as the late Parliament, being call'd by the Keepers of the Liberties of *England*: That if they were not properly a Parliament, they were the Legislative Power, and their Acts as binding: That if two Estates might exclude the third, as they had done the Bishops; if the second did not continue to exercise their Trust, he that was in by Occupancy might have a Title to the Whole; and he would still insist he had a Parliamentary Authority, a Legislative Power to justify him.

The Court acquainted the Prisoner, that these Things had been urg'd already, but they were clearly satisfied that such an Act could not be done by any Parliamentary Power whatever; and that no single Person or Community, neither the People Collectively or Representatively, had any coercive Power over the King. And further, that this Convention, who made this Act, were not an eighth Part of the Commons House; there were but forty six at the Debate, and but twenty six who

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voted it ; and that the House of Lords was then sitting, and rejected it ; so that there was nothing like Parliamentary Authority to justify it. That it was no Derogation to Parliaments that the Courts of Law took upon them to judge of Statutes, and whether such or such a thing was an Act of Parliament or not : And that forty Men met together at *Shooter's-Hill*, might as well pretend to Authority of Parliament as that little Convention at *Westminster*. That the vulgar Acceptation of the Word *Parliament*, had led many into Mistakes ; but that nothing could properly be said to be done by Parliamentary Authority but what was done by King, Lords and Commons. And as to what the Prisoner had mention'd of the Bishops, it was not at all to the Purpose ; for that was done by an Act of Parliament, with the Consent of the King, Lords and Commons.

The Bishops excluded by Act of Parliament.

Mr. *Annesly* remembred the Prisoner, That the Secluded Members had always refus'd to own that Remnant at *Westminster* for a Parliament ; and because they would not acknowledge their Authority, for many Years lay under Sufferings and in Obscurity. That the Prisoner might remember when there was a Jealousy in the People, that they intended to change the Government of King, Lords, and Commons : The Parliament call'd it a *black Scandal cast upon them* : And the two Houses caus'd a Declaration to be affix'd on all the Churches in *England*, that they held the Government of King, Lords, and Commons to be the Fundamental Government of this Kingdom.

Page 265.

Mr. *Scot* desir'd to know what Law or Statute he had transgress'd.

The Court told him the Law of God and Man, and particularly the 25th of *Edw. III.* which says, *If any Man* do compass or imagine the King's Death, it is Treason.

Mr. *Scot* demanded, if the King would be a Traitor if he should compass the Death of the Queen. The Court answer'd, the Queen was a Subject : *Scot* said, he was not yet convinc'd.

Mr. *Scot* then said, he came within his Majesty's Pardon.

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The Court said, it was very odd to talk of a Pardon after such a Justification ; but that the King's Proclamation could not be pleaded in Bar to their Proceedings ; they could take no Notice of a Pardon that was not under the Broad-Seal ; tho' they did not doubt but his Majesty would inviolably make it good if he appear'd to be within it.

Then the Lord Chief-Baron directed the Jury as he had done in the former Tryals ; and took particular Notice of those aggravating Expressions in the Prisoner's Case ; such as his justifying the King's Murder, *and wishing the Action might be engraven on his Tomb-stone.*

Page 266.

Set convicted.

The Jury having consulted together a little time, brought the Prisoner in *Guilty.*

Clement retracts
his Plea, and
pleads Guilty.

Gregory Clement being then brought to the Bar, delivered a Petition into Court, and desir'd to retract his Plea, and plead *Guilty.* And he was set aside.

Jones's Tryal.

John Jones was then set to the Bar, and would have made a partial Confession, which the Court told him they could not accept : Whereupon a Jury was sworn, and charg'd with him. And the Witnesses depos'd, that Colonel *Jones* sat several Times in the High-Court of Justice, but they could not say they saw him there the 27th. His Hand was also prov'd to the Warrant for summoning the Court, and to the Warrant for executing the late King : And the Prisoner confess'd his sitting in the Court, and said the Hand to the Warrants was like his, but did not remember he sign'd it. And being ask'd what he had to say in his Defence ; he said he was not fit to speak to the Points of Law, and must throw himself upon the Court and Jury.

Page 267.

The Lord Chief-Baron then directed the Jury, and told them the Prisoner having confess'd his sitting in the High-Court of Justice, that was sufficient to prove his Design of compassing the King's Death ; and that there was no Occasion for them to stir from the Bar.

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The Jury having withdrawn for a short time, brought Colonel *Jones* in Guilty. *Jones* convicted.

Then all the Prisoners who had been try'd this Day, were set to the Bar; and the Lord Chief-Baron acquainted Mr. *Scot*, that though Judgment pass'd upon him, the Court would respite the Execution, to give him an Opportunity to shew if he was comprehended in the King's Proclamation; and the same he said to Mr. *Scroop*.

It being demanded of *Adrian Scroop*, and the other Prisoners respectively, what they could say why Judgment should not pass upon them to die, according to Law:

Mr. *Scroop* answered, he did humbly submit to *Scroop*, his Majesty's Mercy.

John Carew answer'd, I commit my Cause unto *Carew*, the Lord.

Mr. *Scot* said, he cast himself upon the King's *Scot*, Mercy, and pray'd Mercy.

Jones said he pray'd his Majesty's Clemency; *Jones*, and

Clement pray'd Mercy from the King.

Clement call'd to their Sentence.

Then the Lord Chief-Baron made a Speech to the Prisoners, and represented to them the Foulness of this horrid Crime they stood convicted of. He told them that the King they had murder'd, as they that were personally acquainted with him could testify, was a Person of eminent Parts and Virtues, which would have render'd him admir'd even in a private Station: That his Clemency appear'd in the Beginning of his Reign; and if they look'd back, they would find the People enjoy'd greater Peace and Prosperity in those Days than in the Reigns of former Princes: No Nobleman had been put to Death but one, and that for an Offence which ought not to be nam'd. That they might remember, before the Wars the King had redress'd all the Grievances they could complain of: The Star-Chamber, High-Commission, Ship-money, the Claim of Stannery, &c. were all taken away. That they would do well also to reflect what Concessions he made at the *Isle of Wight*; how he woo'd and courted his People for Peace: And that they should kill their King, and such a King, they ought

The Lord Chief Baron's Speech to them.

Page 262.

He shows them the thing was nevertheless sinful for their pretending Conscience; and that the Man who kill'd his Father and Mother, made the same Pretence.

Sentence pronounced on the last five.

to lay it to their Hearts, and consider with themselves; for though they pretended Conscience, they should remember what our Saviour said, That the Time will come when they will persecute you, and kill you, and think they do God good Service. That there was such a thing as Spiritual Pride, and Men might be over-run with an Opinion of their own Holiness, and go by pretended Revelations; and say they have pray'd about such a thing and find no Remorse or Reluctance. As the Man in *Shropshire* who murder'd his Father and Mother, when he was question'd for it, alledg'd he had pray'd against it, and could not understand it to be a Sin: And therefore he exhorted the Criminals to try their own Spirits, and examine the Fact by the Word of God, and not think every Fancy and Imagination to be Conscience. And having pray'd that God would have Mercy on their Souls, he pronounc'd Sentence on them as Traitors; and the Court adjourn'd till next Morning.

Cook's Tryal.

October 14. 1660. Mr. John Cook (Solicitor-General to the Regicides) was brought upon his Tryal.

A Jury being sworn, Mr. Cook desir'd the Sheriff might be ask'd, if he had heard any of them express any Prejudice to him, for he had not challeng'd any of them. The Lord Chief-Baron told the Prisoner the Officer read the Names of the Jurors out of his Paper as they came, and he was sure he would do the Prisoner no wrong; whereupon Mr. Cook said he was satisfied.

Mr. Solicitor open'd the Indictment, and the Evidence against the Prisoner, shewing, that he was the Man who exhibited and subscrib'd that wicked Instrument call'd, *A Charge of High-Treason*, against his late Majesty, in the Name of all the People of *England*; that he made large Discourses, and aggravated the Charge, and would not suffer his Majesty to speak in his Defence; but told him he endeavour'd to spin out Delays, and desir'd that the Charge might be taken *pro Confesso*. That he was the Man that press'd the Court to give Judgment against the King, and did demand that wicked

Judg-

Judgment before the pretended Court pronounced it: And though he acknowledg'd his Majesty to be a wise and gracious King, yet he said, *That he must die, and Monarchy with him.* That this was the Prisoner's Part, who had also receiv'd Wages, and a Reward for his Iniquity. Then the Witnesses were call'd.

James Nutley sworn.

He depos'd, that upon the late King's being brought to the Bar of the pretended Court of Justice, Mr. Bradshaw the President address'd himself to his Majesty, and said, *Charles Stuart, King of England, the Commons of England, Assembled in Parliament, taking Notice of the Effusion of Blood in the Land, which is fix'd on you as the Author of it, and whereof you are guilty, have resolv'd to bring you to a Tryal and Judgment; and for this Cause this Tribunal is erected.* And added, that there was a Charge to be exhibited against him by the Solicitor-General, and call'd to Mr. Cook, the now Prisoner, to exhibit the Charge; whereupon Mr. Cook exhibited an Impeachment or Parchment-writing, which was call'd a Charge against the King, and it was receiv'd and read.

Page 869.
The Evidence
against him.

Here the Charge being produc'd in Court; and Mr. Cook's Hand, which was subscribed to it, being shewn Mr. Nutley, he depos'd, that he believ'd it to be Mr. Cook's Hand.

Mr. Nutley depos'd further, That the Charge being read, and his Majesty's Answer demanded by the President; the King several times demanded by what Authority he was call'd before them, and the President answering, that the Authority which call'd him thither was a lawful Authority; that it was by the Authority of the Commons of England, in Parliament Assembled, who were the Supreme Authority of the Nation: The King answered he did not acknowledge that Authority; he knew he was under a Power, but by Authority was generally understood a lawful Authority, which he could not admit them to be, and wonder'd they would take the Boldness to impeach their lawful King. That Bradshaw frequently interrupted his Majesty, and told him he trifled with the Court: And Mr. Cook

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also

also (the now Prisoner) often interrupted his Majesty, and pray'd that the Charge exhibited against him might be taken *pro Confesso*.

Mr. Nutley further depos'd, that he was at that time a Student of the Temple, and intimately acquainted with Mr. Cook, and he did, with Tears in his Eyes, intreat Mr. Cook to consider the dangerous Consequences of those Proceedings; and that Mr. Cook said, *I acknowledge it is a very base Business, but they put it upon me; I cannot avoid it; you see they put it upon me.* And that Mr. Cook confess'd it was against the Oath of Allegiance, and seem'd troubled at it. And Mr. Nutley depos'd further, that Mr. Cook did several Days often press for Judgment against his late Majesty.

Page 270.

Mr. Cook demanded, if Mr. Nutley could depose that he brought the Charge into Court.

Mr. Nutley answer'd, he believ'd not, but Mr. Cook exhibited it.

Cook ask'd what this Witness had heard him say they design'd to do with the King.

Nutley reply'd, he had heard the Prisoner say, that he hop'd they did not intend to take away the King's Life; that he labour'd against it; and they told him they only intended to bring him to submit to the Parliament.

Cook said, he never demanded Judgment against the King's Life, but he meant Judgment for his Acquittal; but the Court reminded him, that he desir'd the Charge might be taken *pro Confesso*.

Cook also insisted, that he was directed the very Words he should speak (which the Court admitted.)

Mr. Farrington was sworn.

He depos'd, That Cook exhibited the Charge against his late Majesty, and four several Days demanded Judgment of the Court; and if his Majesty would not answer to the Charge it might be taken *pro Confesso*; and Cook's Hand to the Impeachment being shewn this Witness, he depos'd, that he believ'd it to be Cook's Hand. And he depos'd further, that his Majesty laid his Cane on Cook's Shoulder, desiring him to forbear.

Griffith

Griffith Bodurdo Esq; was sworn.

He depos'd, That *Cook* exhibited the Charge against his late Majesty; styling him *the Prisoner at the Bar*: That he saw him demand Judgment against the King; and several times complain'd to the Court that the King intended Delays, and nothing else:

Page 872.

Joseph Herne sworn.

He depos'd, That the first Day the King was brought to the Bar he could not get near enough to observe what was done in Court, and only heard the Acclamations of the People, saying, *God save Your Majesty*; but that on the other Days the Depo-
nent had a Conveniency of seeing what was transacted in Court: And that the President asking Mr. *Cook* what he had to demand; and *Cook* being engag'd in Discourse with *Dorislans*, the King push'd *Cook* on the Shoulder, whereupon *Cook* turn'd about, looking with great Indignation: And he afterwards heard *Cook* press the Court that his Majesty might give a positive Answer to the Charge; or that it might be taken *pro Confesso*.

That his Majesty telling *Bradshaw* he must demur to their Jurisdiction: *Bradshaw* replied, they sat there by the Supreme Authority of the Nation, the Commons assembled in Parliament, to whom his Ancestors, as well as himself, were ever accountable: That then the King stood up, and said, by your Favour, shew me one Precedent; whereupon *Bradshaw* sat down in great Anger, saying, Sir, we do not sit here to answer your Questions; and that if he would not plead to his Charge, they must record his Contempt. And that the King turn'd about to the People, and said, Remember that the King of *England* is not permitted to give his Reasons for the Liberty of the People; whereupon a great Shout came from the People, crying, *God save the King*. And that *Cook* press'd that the Charge might be taken *pro Confesso*; and that the Court would proceed according to Justice; and that his Majesty might not be suffer'd to use any Words to the Jurisdiction of the Court.

Then the Title of the Charge against the King was read, and the last Clause of the Charge, reciting,

ting, That *whereas the said Charles Stuart had been impeach'd as a Tyrant, Traitor, Murderer, and a publick and implacable Enemy to the Commonwealth*; the said Cook pray'd, in Behalf of the People of *England*, that he might be put to Answer the Premisses, and such Tryal and Judgment might be had thereupon, as was agreeable to Justice.

Mr. Baker was sworn.

He depos'd, That Cook exhibited the Charge against the King, and demanded Judgment against him several Days, as the other Witnesses had depos'd; and added, that Cook charg'd his Majesty with being guilty of the highest Treasons and Crimes that ever were acted on the Theatre of *England*; and pressing, that Judgment might be given against his Majesty; he said, that it was not so much he, as the innocent and precious Blood that had been shed, that cry'd for Judgment against the Prisoner at the Bar [the KING.]

Mr. George Masterfon sworn.

He depos'd, That the Day the Sentence was given against his Majesty, he heard Cook demand in the Name of the Commons assembled in Parliament, and of all the good People of *England*, Judgment upon the Prisoner at the Bar, pointing to the King.

Mr. Burden was sworn.

He depos'd, That Cook gave him, and eight or nine more, their Oaths in the High-Court of Justice, and examin'd them as to their seeing the King in Action, in his Army, and at Nottingham.

Mr. Starkey sworn.

He depos'd, That he was a Student of Gray's Inn, and that he owed all his Knowledge of the Law to Mr. Cook; but that Cook was in Debt, and had desir'd the Deponent to assist him in getting a Protection, and they were very intimate. That about the time of the erecting the High-Court of Justice, he had some Discourse with Cook about it; and Cook said, he thought the Council at Westminster were all mad; and he look'd upon their Proceedings as very ridiculous; and he instanc'd in a Fellow who cried out to the Lord Fairfax, that if he did not consent to the Proceeding, he would kill

Christ

Christ and him ; but that notwithstanding a few Days after the Deponent understood that Cook acted a Part of Solicitor General ; and that he questioning Cook about it, he answer'd, *He was serving the People, and told the Deponent, He would see strange things, and he must wait upon God.* That Cook did acknowledge the King was a wise and gracious Prince ; but the Deponent asking him if he thought he would suffer, Cook told the Deponent, *He must die, and Monarchy must die with him.* And that this was a little before the Sentence.

Then Mr. Cook enter'd upon his Defence : And first, he acknowledg'd his Majesty's Favour that he had been sent to the Tower, and not laid in Irons in a Dungeon ; and confess'd, that had they been charg'd with such a Crime in another Nation, they had probably been serv'd as *John Baptist* was in Prison. He thank'd the Court that he had a fair Tryal ; and said, he did not doubt but those Lords who sat upon him, and were under no Obligation but their Honours, would do him Justice as well as the Judges, who were by their Oaths to do equal Right and Justice. That his Plea was much of the same Nature with *St. Paul's, Against the Law, and against Cæsar, he hop'd he had not offended at all.* He said, that upon the ninth of January 1648, there was a Proclamation for the Tryal of his late Majesty ; that upon the tenth Mr. Steel, Dr. Dorislaus, Mr. Ask, and himself, were ordered to be of Council, and to draw up the Charge. That therefore he thought he would not be said to do it maliciously or advisedly, or with a wicked Intention, he being commanded to do what he did, and acting only within his own Sphere as a Counsellor. 2. He insisted, that Words would not amount to Treason ; and that nothing was to be accounted Treason that was not within the 25th of *Edw. III* ; and that the principal thing against him was, that these were Words put in Writing ; but he thought it did not appear to be his Hand, the Witnesses only swearing that they believ'd it to be his Hand. And further, that he who writes Words that are dictated by another, though they

Cook's Defence.

He objects that his Writing treasonable Words, which others dictated, was not Treason.

Page 274.

might be in their own Nature treasonable, yet he only speaking them after another, and taking them upon Rebound, that was not Treason; because they did not discover a traitorous Heart. That the 25th of *Edw. III.* related to the secret Imaginations of the Heart, and they must be manifest by some Overt-Act: What was dictated to him, and what he did not invent, could not be stil'd malicious; neither could the demanding of Justice be call'd Treason; those Gentlemen (the Regicides) had his Majesty then in their Power a Prisoner, and he hop'd it would appear he gave *bonum & fidele Consilium*. He said, he was utterly against a long Charge, and did not invent one Word himself, but what was express'd in the Act for the Tryal; and that when he pray'd Justice, he hop'd it would not be infer'd there was any Intention of doing Injustice. The next thing he insisted on was, that in all judicial Proceedings there were but four Actors, *viz.* the Accusers or Witnesses, the Jury, the Judges, and the Executioner; and if he was none of these, he could not be guilty of Treason: He was but Council, and pray'd Justice, and if Injustice was done, he was not answerable for it; and he appeal'd to God if he ever us'd one irreverent Expression to his Majesty, or stil'd him *the Prisoner at the Bar*, as the Witnesses had sworn.

That if it were held to be Treason to plead against his Majesty, then it must be Felony to have pleaded against a Man unjustly condemn'd for Felony: That a Counsellor was to make the best of his Client's Cause, and leave it to the Court; and Counsellors do frequently engage in Business before they rightly understand the Fact; and he appeal'd to the Council, if they had not many times been sorry that a Verdict has been given for their Clients when they discover'd the Right lay on the other side, and so might he in this Case: That had this been in time of Peace, he acknowledged it would have been Treason; but his Majesty being then in the Power of the Army, the drawing up a Charge against him, and desiring Justice, and that he might be brought to a speedy Tryal, in order to his Acquittal, was rather a Service to his Majesty

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jeſty than any Treason againſt him. Then he laid hold of the Act of Indemnity ; and though he was one of the Perſons by Name excepted, he hop'd the Parliament did not intend to except him ; for the Act afterwards ſays, *All which Perſons, for their execrable Treasons in ſenteneing to Death, ſigning the Inſtruments, or being inſtrumental in taking away the King's Life, are left to be proceeded againſt as Traitors.* He ſaid he was not at all concern'd either in the ſigning or ſentencing ; and as to the being *Inſtrumental*, he took it only in a limited Senſe to relate to thoſe who were afterwards concern'd in the King's Execution ; for if they took the Word *Inſtrumental* in the utmoſt Latitude, and gave it a Retroſpect, they would make the Act of Indemnity extend to very few : And he hop'd the Jury would conſider, whether all that had any ways counſel'd or been inſtrumental in bringing his Maſteſty to that unfortunate End, were intended to be excepted. And he added, that if the Word *Inſtrumental* was to be taken in its utmoſt Latitude, then the Words ſentencing and ſigning were wholly uſeleſs ; and it was not to be ſuppos'd that any one Word in an Act of Parliament ſhould be fruſtrate and inſignificant.

He ſaid further, That what he did in that Matter was for his Fee, and not of Malice ; and tho' it might be call'd *Avaritia*, it could not be call'd *Malitia* ; that he did nothing judicially, but miniſterially only, and it was falſe to ſay he had given any Man his Oath ; poſſibly they might be ſworn in Court, and he might examine them as to ſome things. Then he ſaid he laid hold on his Maſteſty's Declaration at *Breda* ; wherein he promiſed to pardon all who were not exeepted in a free Parliament : Now he ſaid this Parliament was not call'd by the King's Writ (tho' he had been pleas'd to confirm it,) and he conceiv'd they were not ſuch a Parliament as could make the Exception. — That indeed the Earls of *Effex* and *Southampton* were adjudg'd Traitors for conſpiring to take her Maſteſty Priſoner : But here his Maſteſty being already a Priſoner, without any Hand of his, and he giving no other Advice than what was dictated to him,

Page 1:6

to bring his Majesty to his Tryal, whereby he might have been acquitted and set at liberty, he hop'd he could not be said to be instrumental: That the High Court of Justice was a Court *de facto*, had all the Officers and Formalities requisite to a Court; and he hop'd that one who acted in such a Court, within his Sphere, as a Counsellor, would not be look'd upon as a Traitor, but that the Order of the then Power in being would bear him out: He added, that human Justice did never punish so much for Expiation as for Prevention; that others might be deter'd from committing such Acts, and that now all Things were well settled, there could be no Danger in sparing him; the like Case could never happen again.

Mr. Solicitor's
Reply to the
Prisoner's De-
fence.

Words tending
to the personal
Hurt of the
King treason-
able.

Page 1:7.

Mr. Solicitor reply'd, That what the Prisoner had offer'd was like a Lawyer, the best that his Case would bear; but that it was a high Aggravation of his Crime, that he who knew the Law so well should so much transgress it: That the Prisoner mistook his Charge if he thought it was only for Words, it was for compassing and imagining the King's Death; and the Evidence of that Charge was his meeting in that Assembly of the Regicides, and the Part he bore in that Assembly, nor was it to be receiv'd as a general Rule that Words were no Treason; for if a Man shall declare the Imagination of his Heart by exhorting and persuading Men to kill the King, there could not be a greater Overt Act than such Words, or a clearer Evidence of his traitorous Imagination: As to his Innocence in simply demanding Justice, he desir'd the Jury to observe that the subject Matter was a Charge of High Treason against the King, and he pray'd that the King as a Traitor might be brought to Justice, that he press'd the Charge might be taken *pro Confesso*, and whether Mr. Cook could intend this in Order to the Acquittal of his Majesty, he left them to determine. As to his saying there were but four Actors in this Case, he did but beg the Question, he himself was an Instrument in that Assembly, who met in order to take away the King's Life, and his Gloſs amounted to no more than this: *I am none of those four Ranks; there were others worse than myself, and therefore*

therefore I am none at all. And as for his not being excepted in the Act of Indemnity, he was expressly excepted by Name; and tho' it should be admitted he was not within the Reason of the Exception, that would not avail him, he could only say the Parliament were mistaken in their Reason, but not in the Conclusion; and tho' he would restrain the Word Instrumental, the very penning of that Proviso shew'd that it was the Judgment of the Parliament that he was one of those whom they look'd upon as Instrumental in the King's Death; nor had the King been sentenc'd if he had not been instrumental in exhibiting the Charge, and praying Judgment against him.

As to the Prisoner's laying hold on his Majesty's Letter from *Breda*, that could not amount to a Pardon, not being under the Broad Seal; neither would the Words it contain'd have amounted to a Pardon if they had been under the Broad Seal, for a Pardon could not be by Implication, but must have positive Words; as in the Case of Sir *Walter Raleigh*, who had a Commission directed to our well beloved Subject, and yet it was held that would not amount to a Pardon of the Treason, for which he was condemn'd; but further, that it appear'd by the King's Letter that he intended such as should be excepted by that very Parliament his Letter was directed to, and therefore his Majesty was not oblig'd even in Honour to spare the Prisoner, he having been excepted by Name by that Parliament whom the King had made the Dispensers of his Mercy and Justice in this Particular.

A Pardon cannot be by Implication, but must have express Words.

As to the Prisoner's acting in his Profession as a Council, no Man could have a lawful Calling to pursue the Life of his King; and as to that Part of his Justification that he acted in a Court, and was not answerable for the Constitution of it, and that their Order would bear him out; This was in good Manners to justify Treason, and to say that a few Persons who first made themselves a Parliament might lawfully constitute such a Court; for if the Authority was not lawful, he must be answerable to the Laws for what he had done, and it was one Part of his Treason that he did assist in such an Assembly.

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Then

The TRYALS of

Then Mr. *Solicitor* address'd himself to the Jury, and told them it was their own Case : That the Prisoner had exhibited a Charge against his late Majesty in the Name of all the People of *England*, of whom they were Part, and he hop'd they would let the World know that the People of *England* had no Hand in that Charge, that they should consider how the Prisoner had hunted after the King's Life, how he had fish'd for Evidence against him, and examin'd Witnesses, as to his Majesty's being at *Nottingham* and in the Army ; how he had aggravated the Charge he exhibited against his Majesty, was afflicted at the Delays, and how angry he was when he was interrupted ; and desir'd they would observe the last Thing that had been prov'd against the Prisoner, that he had said, *His Majesty must die, and Monarchy perish with him.*

Sir *Edward Turner* added, in Answer to that Part of his Defence, *That he pleaded for his Fee* ; That *Judas* too had a Fee of thirty Pieces of Silver, for which he hang'd himself. And tho' the Prisoner might repent himself, as he hop'd he did, yet he must pray that their Lordships would do Justice in *terrorem* : And as the Prisoner would not allow it to be Treason to demand Justice against the King, so Sir *Edward* hop'd he would not think it any Unkindness in him that he demanded Judgment against him, because it was just.

Mr. *Wadham Windham* observ'd, As to the Prisoner's sheltering himself under his Profession, it was the highest Disgrace he could throw upon the long Robe : And that this was indeed an Aggravation of his Crime, that if one shall come to ask Counsel of me, and I shall counsel him to kill a Man ; if the Fact follows, I am as guilty as if I did the Fact ; and if Mr. *Cook* advis'd that Act, he was as instrumental, and as much a Traitor as the Man in the Frock, who did the Execution ; He did not think indeed that a Counsellor was always bound to know the Judges Patent ; but here was no Colour of a legal Proceeding : Nothing but a mock Court of Justice, such a one as Mr. *Cook* never met with in all his reading,

reading, nor did he know of any Law under Heaven for putting the King to Death; and that this was to shelter a Man's self, under Colour of Justice, to do the most execrable Treason in the World.

The Lord Chief Baron, in his Directions to the Jury, told them, That for a Man to deliver in an Instrument wherein the King is call'd a Tyrant, Traitor, and Murderer, and implacable Enemy; as) were the Words of the Charge exhibited by Mr. Cook) and praying it might be read, and it is read accordingly. If this was not an Overt Act of imagining and compassing the King's Death, he did not know what was: That this tended to stir up Hatred in the People, and the Consequences of that Hatred is the Death of the Prince.

The Chief Baron's Directions to the Jury.

Tells them the exhibiting the Charge against his Majesty was High Treason.

As to what the Prisoner said, That he demanded but Justice, that was after he had charged the King as a Tyrant, Traitor, Murderer, and common Enemy: That those who spit in the King's Face also demanded Justice; but every one knew what they meant by that Justice: That the Prisoner had also said, That it was not so much he, as the Blood that had been shed that cry'd for Judgment; and whether the Prisoner meant a Judgment for the King's Acquittal, he must leave to the Jury: He took Notice also of the Prisoner's Answers to his old Acquaintance *Starkey*, when he expostulated with him as to his being concern'd in the Business, viz. *You shall see strange Things, you must wait upon God.* This the Chief Baron observ'd was then the canting Language of those who were about to commit some horrid Impiety; that from that Expression, *The King must die and Monarchy with him*, it appear'd it was Monarchy and Government they hated. Many of those that sat upon the King said he was a gracious Prince, they did not hate his Person any more than the Prisoner, but *Monarchy was the Thing they would behead.*

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As to what Mr. Cook urg'd that he acted by the Authority of the Powers in being, and the 11 H. 7. having provided, That he who serv'd the King for the Time being in his Wars should not be punish'd, and therefore he hop'd in Equity he ought not to be question'd,

Page 332.

The Chief Baron shows he was not within the Equity of the 11 H. 7. which indemnifies those who assist a King *de facto*.

Page 213.

Cook replies that he acted according to his Conscience.

question'd, but ought to have the Benefit of that Act. The Chief Baron answer'd, That the Meaning of that Act was against him. It was made to preserve a King *de facto*, how much more to preserve a King *de jure*: That the Person they stil'd their Prisoner was own'd by them as their King. They charg'd him as King, and sentenc'd him as King. That King Henry VII's Care was to preserve even a King *de facto*, and Kingly Government. It was not in favour of an Antimonarchical Government; but they proceeded against their own King as their King, and called him in their Charge *Charles Stuart*, King of England, and therefore he thought there was no Colour that the Prisoner should have any Benefit of the Letter, or the Equity of the Act.

Mr. Cook desir'd Leave to reply, That tho' their Lordships were pleas'd to lay no Weight upon these Orders, or the Authority whereby he acted, he did then act truly and conscientiously, and thought that Authority would have born him out. And tho' the Court were pleas'd to look upon them as a Parcel of People met together without Authority; his Judgment was not yet convinc'd as to that Point: That all the Words he spoke were dictated to him, even those, *That it was not so much he as the innocent Blood cried for Justice.*

The Chief Baron told him he made the Matter rather worse, That they had deliver'd their Opinions already, That the acting by such an Authority was so far from an Extenuation, that it was an Aggravation of the Thing; That his expressing his Approbation of that Power, and acting under them, was the very Thing with which he was charged.

Then the Jury went together, and after a short Recess brought the Prisoner in *Guilty*.

After which *Hugh Peters* was set to the Bar, and making no Challenges to the Jurors, twelve were sworn and charged with the Prisoner; and Sir *Edward Turner* open'd the Indictment, and the King's Witnesses were call'd; and first,

Dr. William Young was sworn:

He depos'd, That the Prisoner having been over in Ireland with the Protector in the Year 1649, return'd

Cook is convicted.

Hugh Peters's Trial.

Page 214.

Young's Evidence against *Peters*.

turn'd to *England* sick of the bloody Flux, and lay at the Deponent's House at *Milford*, where he continu'd after he was recover'd nine or ten Weeks, during which Time the Prisoner and the Deponent grew very intimate, and the Prisoner us'd to rail at and revile the late King and the Royal Family, and told the Deponent he was sent over from *New England* hither in order to stir up this War, and drive on their Reformation: That some Time after he came hither he was sent into *Ireland* by the Parliament, to carry on their Designs there, and that he expended a great deal of his Money, [near 3000 *l.*] in this Service, and had receiv'd only a small Pittance in Land for his Trouble out of my Lord *Worcester's* Estate: That the Prisoner used to say to the Deponent, *It would never be well till the Lords, the Levites, and the Lawyers were put down.* And he depos'd further, that the Prisoner was a Colonel under *Oliver*, and had a Commission to raise Soldiers for the War in *Ireland*, and press'd the Deponent to accept a Commission under him.

Peters us'd to revile the late King and the Royal Family.

That the Prisoner told him when the late King was taken away from *Holmeby-house*, the Parliament had a Design to have seiz'd *Oliver Cromwel* and himself, who were then in *London*; but that having Intelligence of it, they made their Escape out of *London*, and rode hard for it as far as *Ware*; and there they consider'd how they should settle the Kingdom and dispose of the King; and the Result was, that they would try the King for his Life, and cut off his Head: That this *Oliver* and the Prisoner agreed upon.

Cromwel and Peters in danger of being made Prisoners by the Parliament, on the King's being taken out of their Hands.

Here the Prisoner desir'd to be heard, and observ'd to the Court that this Witness had been very violent for the Parliament, and that he was prejudic'd against him, because he refus'd his Assistance to help him into his Living again, when he was turn'd out. And the Prisoner protested he never had any such Conversation with *Oliver Cromwel* about disposing of the King; but that indeed he did lie sick at the Deponent's House, and his Sickness affected his Head, which might make him ramble in his Discourse, tho' he was confident he never spoke the Words the Witness charg'd him with.

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The

The TRIALS of

The Court directed the Prisoner not to interrupt the Witnesses, but take Notes and reserve his Observations till after the Evidence was given.

Peters takes
Duke Hamilton
Prisoner.

Then Doctor Young went on, and said he bore no Malice to the Prisoner, but that it now came into his Mind that the Prisoner acknowledg'd that he was the Man that took Duke Hamilton Prisoner in his Chamber, seiz'd his Goods, and took his George and blue Ribband off his Shoulder, and that the Prisoner shew'd the Deponent the George.

Wybert Gunter was sworn :

Gunter's Evi-
dence of the
Prisoner's Inti-
macy with
Cromwel.

He depos'd that he was Servant at the Star in Coleman-street, where Oliver Cromwel and his Friends us'd to meet, and particularly he remember'd the Prisoner Mr. Peters was there with Cromwel once till ten or eleven at Night, and that they discours'd of the King, who was then a Prisoner, and they call'd him Charles Stuart, and they were writing something which he guess'd they were drawing up against the King, and he added that Mr. Peters then wore a broad Sword.

Mr. Starkey sworn :

Starkey's Evi-
dence.

He depos'd that a little before the King's Tryal the Head-Quarters of the Army was at Windsor, and that Ireton quarter'd at the Deponent's Father's House there ; and having a convenient Room, Oliver Cromwel and the general Officers usually held their Council of War at his Father's : That after the Council of War was over, there us'd to be a private Consult, where Cromwel, Ireton, the Prisoner Peters, Colonel Rich, and a fifth Person assisted, and they generally set up till two or three in the Morning : That sometimes Peters would come in with Ireton and dine and sup with the Family ; and that they frequently talk'd of the King, and that Peters would say the King was a Tyrant and a Fool, and not fit to be a King, and that it was a dangerous, chargeable, and useless Office. That when the News came that the King was made a Prisoner in the Isle of Wight, Mr. Ireton and Peters were at Supper at his Father's, and that his Father, instead of saying God save the King, Prince and Realm, as he usually did after his Grace, (at which Ireton and Peters us'd to laugh)

Page 226.

Peters insists
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lie said; God save the King's most excellent Majesty, and preserve him out of the Hands of all his Enemies. Whereupon Peters said, Old Gentleman, your Idol won't stand long. That the Deponent always look'd upon it that it was the private Cabal of five before-mention'd who contriv'd the Business against the King; and he added, that when one Mr. Bacon took Notice of some Affront the Prisoner had put upon the King, the Prisoner rail'd at Mr. Bacon, and was ready to beat him for it.

Thomas Walkley sworn :

He depos'd, That after the Proclamation was made for the Tryal of the King he went down to Westminster, and in the painted Chamber he saw Oliver Cromwel, John Goodwin the Prisoner, and others; and that Goodwin made a Speech or a Prayer, after which, all Strangers were order'd to avoid the Room, (tho' Oliver would have had them staid.) That the Deponent staid about the Door till they rose, and saw the Prisoner come out with the rest: That when the King was brought up to London, the Deponent saw the Prisoner riding triumphantly before the Coach his Majesty was in, and that at another Time he saw Peters marshalling the Soldiers in St. James's-Park, and he heard Peters say in Westminster-hall, *If we can keep up our Army but seven Years longer, we need not care for the King and all his Posterity.*

Walkley's Evidence of the Prisoner's being at a Consult concerning the King's Tryal.

Mr. Proffor sworn :

He depos'd, That he met the King about Brentford, as they were bringing him up to London, and that the Prisoner rode immediately before the Coach, and that the Deponent pulling off his Hat to his Majesty, the Troopers threw him into the Ditch Horse and all.

Mr. Hardwick sworn :

He depos'd, That being in Westminster-hall when Proclamation was made for trying the King, the Prisoner Peters went out afterwards into the Palace-Yard and said, *Gentlemen, all this is worth nothing unless you proclaim it at Cheapside and at the Old-Exchange.*

Page 227.

Holland Simpson sworn :

He depos'd that he saw the Prisoner at the Consultations about the King both in the painted Chamber

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The TRIALS of

*Peters very
active at the
King's Tryal.*

ber and in the Court, (but he did not sit there as Judge) and that at the King's Tryal he heard the Prisoner bid Colonel *Stubberds* command the Soldiers to cry out *Justice, Justice against the Traitor at the Bar*, and that the Soldiers did cry out as they were bid; and as the King was going back to Sir *Robert Cotton's*, some of them spit in his Face, and the King wip'd it off with his Handkerchief and smil'd: He added, that he had seen the Prisoner in Consultation with *Bradshaw*, and that he saw no Body but *Brereton* and the Prisoner, who were admitted to *Bradshaw* when he lay at the Dean's House.

Thomas Richardson sworn:

He depos'd, That he saw the Prisoner and some others standing in the High Court of Justice, and heard him commend *Bradshaw's* Carriage at the Tryal, and another commended *Cook*; and the Prisoner holding up his Hands said, *This is a most glorious beginning of the Work.*

Sir Jeremy Whitescott sworn:

He depos'd that he had heard the Prisoner speak very scurrilously of the King, and that the Prisoner relating that if *Cromwel* had not gone away suddenly he had been clapt up in the Tower and declar'd a Traitor: He added, there was a meeting of the Officers of the Army, And there (says the Prisoner) *We did resolve to set aside the King.* That at another Time, speaking of the High Court of Justice, the Prisoner said, *I cannot but look upon this Court with great Reverence, for it doth resemble in some Measure the Tryal that shall be at the End of the World by the Saints.* That the Prisoner seldom spoke of the King but he call'd him *The Tyrant*; and one time he said he would have preach'd before him, but the poor Wretch would not hear him.

Richard Nunnely sworn:

He depos'd, That being admitted into the Banqueting-house by *Oliver Cromwel*, about an Hour before the King was beheaded, there the Deponent saw *Hugh Peters*, and that *Peters* meeting *Tench*, a Joiner, (who was concern'd in erecting the Scaffold) whisper'd him in the Ear, and immediately *Tench* went and knock'd four Staples into the Scaffold; and the Deponent asking *Tench* if he would turn

Hang-

*Peters compares
the High Court
of Justice to
the Proceedings
at the last
Day, when the
Saints shall
judge the
World.*

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Hangman, he answer'd this will be a happy Day ; That *Peters* went upon the Scaffold, and came off again ; and that after the King's Head was cut off, the Deponent saw the Vizards go into a Chamber, and about an Hour after he saw *Hugh Peters* in his black Cloak and broad Hat come out of that Chamber, (as the Deponent thinks) with the Hangman ; but he is sure he saw him go along with the Hangman to take Water.

Dr. Mortimer was sworn ; but speaking *English* imperfectly, his Evidence was wav'd.

Stephen Clough was sworn :

He depos'd, That about three Weeks before the King was murder'd, there was a meeting of the Council of Officers at *Westminster*, among whom the Deponent saw *Hugh Peters*, who desir'd to call for a Blessing upon their Business, and in his Prayer, among other Things, said, O Lord what a Mercy is it to see this great City fall down before us ! And what a stir is there to bring this great Man to Tryal, without whose Blood he will turn us all into Blood if he reign again !

Page 882.

Mr. Beaver sworn :

He depos'd, That a few Days before the Act was made for the King's Tryal, the Parliament having appointed a Fast, the Prisoner preach'd before them at *St. Margaret's*, where the Deponent heard him say in his Sermon, That it was a very sad Thing that this should be a Question amongst us, as among the old *Jews*, Whether our Saviour *Jesus Christ* must be crucified, or that *Barabbas* should be released, the Oppressor of the People ? O *Jesus*, (said he) where are we that that should be a Question ! And because you should think, my Lords and Gentlemen, that it is a Question, I tell you it is a Question : I have been in the City, which may very well be compar'd to *Jerusalem*, and I profess these foolish Citizens for a little Trading and Profit will have *Christ* [pointing to the red Coats on the Pulpit Stairs] crucified, and that great *Barabbas* at *Windfor* releas'd : I do not much mind what the Rabble say ; but I have been with my Brethren the Clergy in the Assembly, and I perceive they are for crucifying

Peters's Sermon before the Parliament, inciting them to put the King to Death.

The TRYALS of

Christ also, and releasing of *Barabbas*. O Jesus, (says he) what shall we do now, and shrug'd up his Shoulders, and with such Stuff he continued to entertain his Audience! Afterwards he address'd himself to the Lords and Commons particularly, and said, You are the Sanhedrim, the great Council of the Nation; therefore you must be sure to do Justice: It is from you we expect it. You must not only be Inheritors of your Ancestors, but you must do as they did: They have oppos'd tyrannical Kings, they have destroy'd them. It is you that we chiefly expect Justice from; Do not prefer the Great *Barabbas*, Murderer, Tyrant and Traitor, before these poor Hearts, (pointing again to the red Coats) and the Army, who are our Saviours; and thus for two or three Hours he spent his Time in inciting his Audience to bring the King to a speedy and capital Punishment.

Then the Journal of the House was produc'd, to shew *Peters* was order'd to preach on the Friday following, the 20th of January, 1648.

And Mr. *Chafe* was sworn:

*Peters's Sermon
on that Text,
Bind your Kings
in Chains, &c.*

He depos'd, That he heard the Prisoner preach before *Cromwel* and *Bradshaw* on that Text, *Bind your Kings in Chains, and your Nobles with Fetters of Iron.* That he told them the next Psalm had twelve *Hallelujahs*, which were intended to express their Joy That Kings were bound in Chains, &c. Then he told the Story of the Mayor that laid the Bishop's Man by the Heels for being drunk; and when the Bishop complain'd of it, the Mayor answer'd, There was an Act of Parliament for it, and neither the Bishop or his Man were excepted out of it. And so (says *Peters*) here is a great talk in the World, What will you cut off the King's Head, the Head of a Protestant Prince? turn to your Bibles, and you shall find, *Whosoever sheds Mans Blood, by Man shall his Blood be shed*; as the Mayor said of the Bishop and his Servant, I see neither King *Charles*, nor Prince *Charles*, nor Prince *Rupert*, nor Prince *Maurice*, nor any of that Rabble excepted out of it, and added, *This is the Day that I and many Saints of God have been praying for these many Years*: And the Deponent observ'd that *Oliver Cromwel* laugh'd at the Discourse.

Page 229.

Thomas

Thomas Tongue was sworn.

He depos'd, That on the 21st of January 1648, he heard the Prisoner preach at *White-hall* on that Text, *To bind their Kings in Chains, &c.* and he said he hop'd to see such another Day as the Day before (when the King was brought to his Tryal) and *Peters* bless'd God. that the Lower-house was purg'd; and said the House of Lords would down suddenly.

That on Sunday the 28th of January 1648, the Deponent heard the Prisoner Preach in *St. James's Chappel* on the 149th Psalm, 6; 7, 8, and 9th Verses; and that he mightily fainted the Red-coats, and reprobated the King's Friends, and quoted the 14th Psalm, 18, 19, and 20th Verses, *All the Kings of the Nations shall lye in Glory, but thou art cast out like an abominable Branch, &c.* and upon this Text the Prisoner said he intended to have preach'd before the poor Wretch [the King, who was condemn'd the Day before] but the poor Wretch would not hear him: And the Prisoner bid his Audience look in their lesser Bibles, and they should find the Title of this Passage to be, *The Tyrants Fall.*

Peters says he would have preach'd before the poor Wretch [the King] but he would not hear him.

Reynold Bowdler sworn.

He depos'd, That he heard the Prisoner Preach at *St. Sepulchers*, where he compar'd the King (who was then to die) to *Barabbas*, &c. as Mr. Beaver depos'd above.

William Rider was sworn.

He depos'd, That he was at *St. Sepulchers* at the same time; and the Prisoner having compar'd the King to *Barabbas*, as Mr. Beaver depos'd, the Prisoner said further, that he had known eighty Thousand of the King's Soldiers, and not one of them a gracious Person.

Mr. Walker sworn.

He depos'd, That he heard the Prisoner preach at *White-hall* the Sunday after the King was first brought upon his Tryal; and the Prisoner, among other things, said, I have preach'd and pray'd these 20 Years, and now I may say with old *Simeon*, *Lord now lettest thou thy Servant depart in Peace, for mine Eyes have seen thy Salvation*; and that afterwards he

R 2 took

took occasion to insist on those other Topicks the other Witnesses mention'd.

Peters's Defence.

Then the Prisoner desir'd *Cornelius Glover* might be call'd, to shew that he was not out of his Chamber that Day the King was beheaded. And
Glover appear'd.

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He depos'd, That he belong'd to the Post-house at present, but when the King was beheaded he was Servant to the Prisoner; and that his Master was sick in his Chamber at *St. James's* that Morning; and the Deponent desir'd leave of him to go to *White-hall* and see what was doing; and his Master giving him leave he went, but there being a great Crowd that he could not come near, the Deponent return'd about an Hour after to *St. James's*, where he found his Master, the Prisoner, still in his Chamber. And being ask'd by the Court if the King was dead when he return'd from *White-hall* to *St. James's*; the Deponent answer'd, he understood he was not.

Mr. Peters said in his Defence, that he did not move or begin the War, that he had been fourteen Years abroad, and came over from *New-England*, being sent hither to solicit some Affairs of that Country; that when he was here, he acknowledges he was induc'd, by the strong Importunities of the Ministers of *London*, to stir in that Matter; but said the *London* Ministers were much deeper in it than himself; that he was sorry to hear of his Carriage towards the King, it was a great Trouble to him, and he beg'd Pardon for his Folly and Weakness; that he had neither Malice nor Mischief in his Heart against the King, tho' he did not deny that he had been active in the War, after he was drawn in; he said he had always acted with Honour and Respect towards the King, particularly when his Majesty was at *Windsoer*; and that he had propos'd three Ways to his Majesty to extricate himself out of the Difficulties he was in, which the King approv'd, but they did not succeed: That he never had a Groat from *Oliver Cromwel*; nor had he aspir'd after Honour or Gain, since he set his Foot ashore in *England*; that he had no Malice in him, nor had he persecuted any of the King's Party,

Party, but paid them great Respect; and he would have produc'd a Certificate of the Lady Worcester's, to shew how much a Friend he had been to her Lord in his Sufferings, &c.

But the Court told him they did not call him to an account for his good Actions, but for the Evil he had done; and reminded him of the Facts that had been prov'd against him; and gave him to understand, that the consulting and meeting together about the King's Death, tho' he did not fit or sentence him, or the giving Aid, Comfort, or Encouragement to these Traitors, made him guilty of the whole Charge in Law; and that whatever Speeches he had utter'd, either out of the Pulpit or in the Pulpit, tending to Sedition, they were Overt-Acts, and prov'd the treasonable Imagination of his Heart, with which he was charg'd. Then the Lord Chief-Baron, having repeated the Substance of the Evidence, demanded of Mr. Peters what he had further to say for himself.

Mr. Peters answer'd, there was but a single Witness to any one Fact.

The Chief-Baron acquainted him, that tho' there ought to be two Witnesses in Treason, there need not be two to every Fact; but here there had been several Witnesses produc'd to one thing, so that his Objection could carry no Weight.

Mr. Solicitor also observ'd, that there had been many Witnesses to every Fact, viz. That the Prisoner had been in Arms, that he had call'd the Day of his Majesty's Tryal a glorious Day, and resembled it to that wherein the Saints should judge the World; that he had often preach'd and pray'd for it; and, in short, that no Man could be said more justly to have contriv'd the Death of the King than this miserable Priest had done; that the Honour of the Pulpit was to be vindicated, and the Death of this Man would preach better than his Life had done; it might be a means to convert many a miserable Man whom his Preaching had seduc'd, for many came before the Court, who said they did it in the Fear of the Lord; and now it was discover'd who taught them; and he hop'd the

R; Court

Page 892.

Page 892.

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Court would make an Example of this carnal Prophet.

Hugh Peters convicted.

Cook moves in arrest of Judgment.

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Judgment pass'd on Cook and Peters.

Hewlet arraign'd.

Axtel's Tryal.

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Simpson's Evidence that Axtel commanded the Guards at the King's Tryal.

Then the Jury withdrew, and, in a very short time, return'd and brought the Prisoner in *Guilty*.

Then the King's Council mov'd that Mr. *Cook* and *Peters* might receive Judgment together; and Mr. *Cook* being set to the Bar, he mov'd in arrest of Judgment, that it was not aver'd in the Indictment that he was the same *John Cook* that was excepted in the Act of Indemnity; but the Court told him he had admitted it by pleading to the Indictment. Then he objected that the Overt-Acts should have been particularly laid in the Indictment; but was told that this neither could not be alledg'd in arrest of Judgment, after the Jury had convicted him of compassing the King's Death. He then repeated some of those Exceptions he had taken at his Tryal, but was told they had been over-ru'd already: And the Chief-Baron made a short Speech to Mr. *Cook* and Mr. *Peters*, telling them, that as they had had a liberal Education, they could not be insensible how they had transgress'd the Laws of God and the Kingdom, in being so instrumental in the King's Murder; and having shew'd with what Aggravations their Crimes were attended, he pronounc'd Sentence on them as Traitors.

October 15, 1660, *William Hewlet* was arraign'd, and pleaded *Not Guilty*.

After which *Daniel Axtel* was brought upon his Tryal, and a Jury being sworn and charg'd with him, the King's Council open'd the Indictment and the Evidence; and

Holland Simpson was sworn.

He depos'd, That *Colonel Stubbers* and the Prisoner commanded the Guards who were drawn up in *Westminster-hall*, for the Security of the High-Court of Justice; and that upon the exhibiting the Charge against the King, in the Name of all the Commons of *England*, a Lady (he understood it was the *Lady Fairfax*) cried out, *It is a Lie*, not Half nor a Quarter of the People, *Oliver Cromwel* was a Rogue and a Traitor; whereupon the Court call'd to the Guard, and the Prisoner brought up

some

some Musqueteers, and made them present their Pieces, and bid them fire at the Lady; and commanded her to unmask.

And bid the Soldiers fire at the Lady who interrupted the Court.

Colonel Huncks sworn.

He depos'd, That the Day the King died, the Deponent was in a Room at *White-ball* with *Oliver Cromwel*, Colonel *Hacker*, and Colonel *Phayre* (*Ireton* and *Harrison* being a-bed in the same Room) and the Deponent refusing to sign an Order for executing the King, and *Cromwel* giving him some ill Language upon it, the Prisoner came in and said, Colonel *Huncks*, *I am asham'd of you, the Ship is now coming into Harbour, and will you strike Sail before we come to Anchor?* and appeal'd to the Prisoner's Conscience for the Truth of it.

Axtel reply'd, he did not remember he had any Conversation with the Witness at *White-ball*, or with any of the Company he mention'd; that the Witness was a Stranger to him, and he wish'd that to excuse his being nam'd in the Warrant for Execution, and make his own Peace, he did not accuse him, and he appeal'd to the Conscience of the Witness again, if he ever met him there as he had depos'd.

Then *Huncks* demanded of the Prisoner (because he pretended not to know him) if when *Cromwel* would have taken the Crown upon him, the Deponent did not say to the Prisoner, *What have you got by driving Jehu like?*

The Prisoner reply'd, it was notorious how *Jehu* like he was, when he was one of the forty Halbardeers that were a Guard upon the King, and oppos'd all that were for him; and desir'd to know upon what Account the Words were spoke.

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Huncks answer'd, That *Cromwel* having the Warrant directed to *Hacker*, *Phayre* and himself (the Witness) for executing the King, *Cromwel* would have had him, by virtue of that Authority, sign'd a Warrant directing the Execution of his Majesty; and he (the Witness) refusing, *Axtel* us'd that Expression, *The Ship is now coming into Harbour, &c.*

Sir Purbeck Temple sworn.

Evidence of
Axtel's beating
the Soldiers to
make them cry
Justice, Justice,
&c.

He depos'd, That upon the Lady's crying out at the King's Tryal, *Nor half the People of England, &c.* he heard Colonel *Axtel*, the Prisoner, say, *Down with the Whores, shoot them;* and the Deponent observ'd that the Prisoner then commanded the Guards, and was the most active Man there; and that he saw him laughing with the Soldiers, and scoffing aloud when the King was urging to be heard; and some of the Soldiers fir'd Powder in their Hands (he suppos'd by the Prisoner's Direction) insomuch that his Majesty was forc'd to rise out of his Chair it was so offensive to him; and that when the King bid his pretended Judges remember he was their lawful King, *Axtel* order'd the Soldiers to cry our Justice, and those that refus'd he beat till they cry'd out with him *Justice, Justice, Execution, Execution*, till Sentence was pronounc'd, and then the King was hurried away in a Hackney-Chair; and the Chair-men, in respect to his Majesty, going bare, the Soldiers, under the Command of the Prisoner, beat them, and would not suffer them to go bare; that the Deponent follow'd the Chair to the middle of King-street; and the People cry'd out, *Do you carry the King in a common Sedan, as they do one who has the Plague? God deliver your Majesty out of the Hands of such Enemies.* That the Deponent receiving many Hurts and Injuries from *Axtel's* Soldiers, was forc'd to leave the King in that Street; and they carried the King shouting through the Streets in triumph. That after the King was murder'd, the Deponent, at the instance of some Persons of Quality, with great Difficulty procur'd a Sight of the King's Head and Body, which were laid in a Coffin, and kept under a Guard commanded by the Prisoner *Axtel*; and the Officer who shew'd him the Coffin said, *If thou think'st there is any Holiness in it look there;* and the King seem'd to smile as if he had been alive.

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Axtel denied he commanded those who guarded the King at his Tryal.

Sir *Purbeck Temple* said, he did not charge him with commanding the Halbardeers who were about the

the King's Person, but the Red-coats below; and he was positive he beat four or five of them, because they would not cry out *Justice, Justice*: And added, that when other Faces were sad, he observ'd the Prisoner laughing, as if he had been carousing with his Soldiers.

Griffith Bodurdee Esq; sworn.

He depos'd, That he saw the Prisoner very active in commanding the Soldiers at the King's Tryal; that he admitted whom he pleas'd, and kept whom he pleas'd out of Court; and that when the Ladies cried *Not Half, the People, &c.* the Prisoner bid the Soldiers shoot them if they said a Word more; and the Soldiers presented their Pieces at the Gallery; and half a quarter of an Hour after, *Dendy* the Serjeant came to the Gallery, from the Court, to know who it was made the Disturbance, but the Lady was withdrawn.

Richard Young sworn.

He depos'd, That *Axtel* was very active in encouraging the Soldiers to cry out *Justice, Justice* at the King's Tryal.

John Jeoner sworn.

He depos'd, That he waited on his Majesty as his Domestick Servant at the Tryal, and with three or four more stood near the King; and that *Axtel* commanded the Guard; and when the King was commanded to be withdrawn, *Axtel* drew out his Guard, and bid the Soldiers cry *Justice, Justice*; and the last Day of the Tryal, *Axtel* bid the Soldiers cry *Execution, Execution*.

Samuel Burden sworn.

He depos'd, That he was a Soldier in *Axtel's* Company; and that *Axtel* commanded him, and several more, to be Witnesses against the King; and *Justice Cook* took his Examination. And he depos'd further, That the Prisoner commanded *Elshus Axtel*, with a File of Musketeers, to take a Boat and fetch the common Hang-man, who liv'd beyond the Tower, to execute the King; and that *Axtel* commanded his own Company to be drawn up in the Banqueting-house during the King's Execution.

Edward

The TRYALS of

Edward Cook sworn.

He depos'd, That on the last Day of the King's Tryal, a Lady made a Disturbance in the Gallery; and *Axtel* said, *What Drab is that? come down, or I will fetch you down.*

Mr. Nelson sworn.

He depos'd, That discoursing the Prisoner at *Dublin*, and asking him who it was that executed the King, the Prisoner smiling said, *You know them well enough*; and at length told the Deponent that it was *Hewlet* and *Walker*; and they had either 30 Pounds a piece, or 30 Pounds between them for that Service.

The Evidence being clos'd, Mr. *Axtel* desir'd to know upon what Statute he was indicted; and was told the 25th of *Edw. III.*

Axtel's Defence.

Page 899.

Then Mr. *Axtel* enter'd upon his Defence, and said, as he was ignorant of the Law, he hop'd the Bench would be of Council with him, and not suffer him to perish for want of understanding the Niceties and Punctilio's of pleading. He said he thought he could not be brought within the 25th of *Edw. III.* for that only concern'd private Persons who compass'd the King's Death; that the War was enter'd into, and the Army rais'd by Authority of Parliament; and they had declar'd that the Militia of Right was in them; that he had acted by Commission from the Parliament's General, who were call'd by the King's Writ, chosen by the People, and, by an Act, could not be dissolv'd without their Consent; that they were in being when the King's Tryal happen'd, and he question'd if they were yet legally dissolv'd.

That their Authority was acknowledg'd both at Home and Abroad; and Foreign Nations sent Embassadors to them; and the Judges, who were the Eyes of the People, and ought to be their Guides, acted by their Authority; and tho' it was objected that the Lords and Commons could not make an Act; if they were no more than Orders, yet being universally obey'd by the Judges, Ministers and Officers of State, he hop'd they were sufficient to bear him out; that what he had done was as a Soldier, deriving his Power from his General,

neral, who had his Power from the Fountain, namely the Lords and Commons. That if he was upon the Guard at the King's Tryal, it was by Command of his General, not voluntarily; nor was he a Contriver or Counsellor, or Parliament-man, or any of the Judges who sentenc'd the King, or had any Hand in his Execution; and if it were such an Offence to have a Command in the Army, General *Monk*, and the other Generals, were as Criminal as he, and all the People who acted by the same Authority in the three Nations; and admitting the Authority were an Authority of *Fact*, and not of *Right*, yet he conceiv'd those who acted under them ought not to be question'd; and what he had been govern'd by, was the declar'd Judgment of the Lords and Commons, as to their Right in the Militia; and that it was agreeable to Reason and Conscience, that the common People should be directed in their Judgments by the High-Court of Parliament; and this Parliament had expressly affirm'd, that the Persons who acted by their Authority ought not to be question'd. That if he was guilty of Treason, the Commons in Parliament began the Treason; and if the Representative Body were Traitors, then were the People whom they represented so too, and there would not be found a Jury to try it.

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The Court answer'd, that before the Fact for which he was indicted, they had destroy'd both Lords and Commons too; and they had not left above Forty in the House of Commons, of whom there were but Twenty-six who voted that pretended Act, under which he would shelter himself.

Colonel *Axel* reply'd, that the Commission that authoriz'd him to obey his General, was given him while the Lords and Commons sat in Parliament; and that he did but his Duty in being with his Regiment in the Hall, if the General order'd him to a Place, if he refus'd he must die, and it was hard if he obey'd he must be in danger too.

The King's Council said, they did not charge him with what he did by virtue of his Commission, but with those violent Acts of encouraging the

Page 901.

The Court shew
Mr. Astel the
Weakness of
his Defence.

He ought to
have taken No-
tice that the
Authority he
acted by, was
not a legal Au-
thority.

Page 902.
Astel's further
Defence.

the Soldiers to cry *Justice, Justice, Execution, Execu-
tion*, and those other Actions which evidenc'd his
Malice against the King; and that they had not
indicted him for levying War, but for compassing
the King's Death, and had given in Evidence those
Overt-Acts to prove it.

The Court added, that there could be no Excuse
for Treason, his Commission could not warrant his
doing a treasonable Act; that he was oblig'd to
take Notice of the Authority by which he acted,
whether it was good or no; and further, that his
Commission did not empower him to put the King
to Death, but to preserve him; that those very
Lords and Commons, under whom he would
shelter himself, made Protestations, Declarations,
and Oaths for Preservation of the King's Person,
which he could not but take Notice of; and he
could not but remember that the Army came with
their Swords in their Hands, and turn'd out whom
they pleas'd, they excluded the greatest Part of the
Members, and laid the Lords aside; and then 46
of the Commons took upon them to sit, and 26 of
them voted this Ordinance, which he pretended to
act in Obedience to; and as for the obeying his
General, he was not charg'd with levying War,
but for these violent Acts, for which his Commis-
sion or his Orders gave him no Colour, as for cry-
ing out *Justice and Execution*, and sending for the
Hang-man, &c.

Mr. Astel still insisted, that he had not advis'd
or compass'd the King's Death, he neither sen-
tenc'd him or sign'd the Warrant for his Execu-
tion; that he was not concern'd in that Violence
put upon the House of Commons, they were Per-
sons superior to him, he was but an inferior Officer.
As to that Particular sworn against him, viz. that
he silenc'd a Lady who made some Disturbance, he
said, if a Lady did talk impertinently, and he de-
sir'd her to hold her Tongue, he hop'd it was no
Treason, especially being commanded, upon pain
of Death, to preserve the Peace: And as to what
Colonel Huncks depos'd he should say, viz. *I am
asham'd of you, the Ship is now coming into Harbour,
and will you strike Sail before we come to Anchor?* in the
first

first Place, he absolutely denied the Words; but admitting them to be spoke, here was no Person or Fact named; and to say that they were an Evidence of his imagining the King's Death, he thought the Inference very remote and strain'd; and according to Sir *Edward Coke*, the Evidence in High-Treason ought to be as clear as the Noon-day Sun; and he desir'd Colonel *Phayre* and Colonel *Hacker*, who were said to be in the Room when the Words were spoken, might be admitted as Witnesses in this Case; and he did not doubt but they would clear him.

The Court told him, that *Phayre* and *Hacker* were in the same Condition with himself, and could not be Witnesses for him; and if they could, they must swear to a Negative, which would be of little Weight against a positive Witness.

Page 903.

Colonel *Axtel* proceeded in his Defence, and said, as to what Colonel *Temple* had depos'd, viz. That he observ'd him laughing while others sigh'd; he did not remember he saw this Witness there; and however, Smiling was no Treason, if he did so; but he believ'd he had as deep a Sense of what was transacted that Day as others.

As to what had been depos'd concerning his bidding the Soldiers cry out *Justice, Justice*, it might proceed from an easy Mistake of the Witnesses, who seeing him beat the Soldiers, and telling them, he would teach them to cry *Justice, Justice, &c.* the Witnesses hearing him take the Words at the Rebound, might imagine he bid them cry *Justice, &c.* when he intended nothing less; besides, admitting the Words to be spoken, none of the Witnesses said against whom *Justice* was demanded; and barely to desire *Justice*, (one of the great Attributes of God) he thought could be no Crime. As to the King's being carried away in a Sedan, he was carried off by the Guard of Halbardeers, among whom Colonel *Hunchs* was one, and not by him. As to the Word *Execution*, this also he said he might take by Rebound from the Soldiers, and the Witnesses might misunderstand him, as they did in Relation to the Words *Justice, Justice*, for which he corrected the Soldiers; and added, that however the *Execution of Justice* was

His Defence, as to the Soldiers crying out *Justice, Justice.*

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a glo-

The TRIALS of

a glorious Thing, and the bare desiring of it could never be construed High Treason.

As to *Burden's* Testimony, he appear'd to be a Prisoner, and might say what he did to extricate himself; and besides, he was prejudic'd against him, having complain'd of Hardships from him, and therefore he hop'd his Evidence would be of no weight: He said, It was possible he might be upon Duty with his Regiment in the Banqueting-house at the Time of the King's Execution, but it was by Command of his General, whom it was Death to disobey; but for sending for the Executioner he absolutely denied it, and protested he was never at any Consultation about the King's Death. That Matter he said was manag'd by *Ireton*, *Harrison*, and *Cromwel*, among themselves.

That it was possible Colonel *Temple* might speak to him, to procure him access to the Place where the Kings Corps lay, and he might speak to the Halbardeers, who had the Charge of it, to admit him; tho' he did not remember it, neither was that Guard under his Command.

As to his telling Colonel *Nelson* that *Hewlet* was the Person who executed the King, he said, It was impossible he should, for he was perfectly ignorant what Persons were concern'd in the Execution, and hop'd the Person on whom Mr. *Nelson* had fix'd it would receive no Prejudice from his Testimony.

Page 901.

He added, that the Words *Justice* and *Execution*, as they were testified to be spoken without Application to any Person or Thing, were of an uncertain Signification, and might bear a good as well as a bad Construction, and in favour of Life, the best Sense ought to be put upon them: And he urg'd further, that Words alone could not amount to Treason, unless put in writing: *Words (he said) might make an Heretick, but not a Traitor.*

He observ'd that *Burden* depos'd no more than that he heard that the Prisoner sent *Elisba Axtel* for the Executioner, and hearsay was not to be admitted as Evidence in Treason, and urg'd that *Elisba Axtel* was but in *Ireland*, and if he was so material a Witness, he ought to have been brought over as well as this Man, who repeated but what he heard from him.

Then

Then he objected that his Majesty had declar'd he would pardon all that were not excepted by Parliament; now this he thought must be intended of such a Parliament as was call'd by the King's Writ, which this was not.

The Court told him this Exception had been over-rul'd already. That the King's Declaration was no Pardon in Law, tho' it ought to bind in Honour; and further, that it appear'd plainly that the King by his Declaration meant that Convention or Assembly of Lords and Commons, to whom he directed the Declaration; that these were accepted and acknowledged by the King as a Parliament, and these were the Persons who had excepted him out of the Act of Indemnity.

Page 904.

Then Mr. *Axtel* left himself to the Jury, and told them, he hop'd they would remember their Ancestors and their Posterity; that his Life, his little ones, and his Family, were all in their Hands, and said, he never heard before that Words would amount to Treason.

Then the Lord Chief Baron directed the Jury, *Axtel convicted.* who afterwards went together, and after a short Recess, brought the Prisoner in *Guilty.*

The 19th of *October*, 1660, the Tryal of Colonel *Francis Hacker* came on, and a Jury was sworn, the Prisoner making no Challenges to any of them: And Mr. Serjeant *Kelynge* having open'd the Indictment, the Kings Witnesses were call'd.

Page 907.
Colonel Hacker's Tryal.

Colonel *Tomlinson* sworn:

He depos'd that he was of the Guard that was appointed for the Security of the King's Person; That the Orders for removing the King (when he was to be brought to *Westminster*, &c.) were always directed to himself and three more, but that there was a Party of Halbardeers appointed to be more immediately about his Majesty, to prevent too great Access of People to him, and for the stricter observing the other Guards: That of these Halbardeers Colonel *Hacker* was one; and when Serjeant *Dendy* us'd to come to *Cotton-house*, and demand that the King should be brought to the High Court of Justice, Colonel *Hacker* with the other Halbardeers us'd to guard his Majesty thither, and the Deponent us'd

us'd to wait at *Cotton-house* till the King was brought back : That there were many Indignities offer'd his Majesty during his Confinement, that the Soldiers would come into the Room where he was with their Hats on, smoking Tobacco, &c. which the Deponent always check'd them for, which his Majesty took so kindly, that he communicated several Things to him before his Death, and gave the Deponent a Gold Toothpick and Case, and desir'd he would not leave him at his Execution.

Page 908.

That the Day appointed for the King to die, a Warrant came to bring him from *St. James's*, and the Halbardeers had his Majesty thro' the *Park*; that the Bishop of *London* and the Deponent attended on him, and the King discours'd of his Burial, and wish'd that the Duke of *Richmond* and some others might have the Care of it; and his Majesty told the Deponent he had some Thoughts his Son might come to bury him, and therefore desir'd he might not be buried suddenly.

That when the King came to *White-hall* he was carried into a Room in the Gallery, called the *Horn-Chamber*, and that Mr. *Seymour* desiring leave to present a Letter from the Prince to his Majesty, the Deponent introduc'd him; and that the King having read the Letter, and given Mr. *Seymour* some Things in Charge, he was pleas'd to mention the Deponent's Civility to him: That as soon as Mr. *Seymour* was gone, Colonel *Hacker* (the Prisoner) and two others named in the Warrant came in, and as the Deponent remembers, Colonel *Hacker* produc'd the Warrant, whereby the Orders for the Security of the King's Person were to cease: And that afterwards Colonel *Hacker*, by Virtue of this Warrant, went into the Inner-Room where the King was, and led him out, and the Bishop of *London* and the Deponent follow'd his Majesty to the Scaffold: That the King look'd about a little, as if he intended to have spoken to the People, (as he had intimated to the Deponent the Night before he design'd) but that his Majesty turn'd and directed his Speech to the Deponent, who stood at the Entrance on the Scaffold,

Evidence that
Colonel *Hacker*
led the King
to his Execu-
tion.

Her-

Hercules-Huncks sworn :

He depos'd, That a little before the Hour the King was murder'd he was in *Ireton's* Chamber, where were also *Ireton*, *Harrison*, *Cromwel*, *Hacker*, Colonel *Phayre*, and *Axtel*, and that the Warrant for the Execution of his Majesty was produc'd ; and as Mr. *Hacker*, the Prisoner was reading the Warrant, *Cromwel* commanded the Deponent by Virtue of that Warrant to draw up an Order for the Executioner ; which the Deponent refusing, some hard Words pass'd between him and *Cromwel* : And *Cromwel* took a Pen and Ink and wrote something himself, (which the Deponent believ'd to be an Order to the Executioner) and when *Cromwel* had done writing, he gave the Pen to the Prisoner *Hacker*, who stoop'd down and wrote his Name (as the Deponent thought) on the same Paper, and then they all went out ; and immediately after the King was brought upon the Scaffold and murder'd.

That he sign'd the Warrant to the Executioner.

Mr. Secretary *Morrice* sworn :

He depos'd, That by an Order of Council Mr. *Annesly*, Sir, *Anth. Asby* Cooper, and himself, went to the Tower to examine Colonel *Huncks*, who was the King's Executioner. (He being appointed with two others by a Warrant from the High Court of Justice to see the Execution done.) And having examin'd Colonel *Huncks*, he told them, that he refus'd to sign the Order to the Executioner, but that the Prisoner *Hacker* sign'd it ; whereupon *Hacker* was examin'd, and at first deny'd he sign'd it, but on their telling him it would be prov'd by Colonel *Huncks*, *Hacker* said, I do believe I did sign the Warrant for appointing the Executioner.

Page 909.

Lord *Annesly* sworn :

He depos'd, That he was of the Committee of Council who went to the Tower to examine *Huncks* and others, and that *Huncks* acquitted himself of signing the Warrant, but said that *Hacker* sign'd it ; whereupon *Hacker*, who till then remain'd an Officer in the Army, was taken up and brought before the Council. And being examin'd privately (by the same Committee who had examin'd *Huncks*) concerning the Man that cut off the King's Head ; he at length did tell them that he believ'd he did sign

The TRYALS of

the Warrant, and that the Warrant was read to him, wherein there might be the Executioner's Name; but that he could not now remember the Name.

Benjamin Francis was sworn:

He depos'd that he was coming from *Westminster* at the Time the King was executed, and he saw the Prisoner, Colonel *Hacker*, upon the Scaffold, and that he seem'd to have the principal Command there.

Hacker's Defence.

The Court demanding of Colonel *Hacker* what he had to say in his Defence; He said that he was a Soldier, and under Command, and what he had done was by Virtue of the Warrant from the High Court of Justice; but that he did not deliver any Warrant or Order to the Executioner, or knew who he was: That he was neither Counsellor, Adviser, or Abettor of the Fact, and what he had done was only in Obedience to the Command of those above him.

Then the Chief Baron directed the Jury, and told them, That if the Prisoner who brought the King to the Scaffold, and who had the Care and Management of the Business, and sign'd the Warrant to the Executioner, was not guilty of compassing the King's Death, no Man could be said to be guilty.

Page 910.

Hacker convicted.

The Jury having withdrawn a very little Time, brought in their Verdict that the Prisoner was Guilty.

Hulet's Tryal, who was charg'd with executing the King.

Then *William Hulet* was brought upon his Tryal; and a Jury being charg'd with him, Sir *Edward Turner* open'd the Evidence, wherein he acquaints the Jury, that this was the Man in the Frock and Vizard who gave the fatal Stroak.

Richard Gittens sworn:

He depos'd, That the Prisoner *Hulet* and himself were Serjeants in the same Regiment twelve or thirteen Years: That a Day or two before the King was murder'd, Colonel *Hewson* commanded thirty-eight of them to take an Oath of Secrecy (among whom were the Deponent and the Prisoner:) And when they were sworn, he demanded if any of them would undertake the Execution, and he should have 100 *l.* Reward, and Preferment in the Army, and that every Man refus'd; but that afterwards they under-

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understood *Hulet* accepted it: That the Day the King was executed, the Deponent was one of the Guard that was drawn up in the Banqueting-house, and he got to the Scaffold; and when the King came upon the Scaffold, he said, *Executioner, Is the Block fast?* And *Hulet* (as the Deponent guess'd) was the Man who fell on his Knees and ask'd his Majesty Forgiveness: The Deponent thought it was *Hulet* by his Speech and the Proportion of his Body; and besides, he was not seen in the Regiment that Day: That *Hulet* had a Pair of freeze Trunk Breeches and a Vizard on with a grey Beard; and Colonel *Hewson* us'd afterwards to call him Father grey Beard, as did most of the Army.

Page 911.

Stammers sworn:

He depos'd, That the Prisoner *Hulet* was Captain-Lieutenant of Colonel *Hewson*'s Troop, and that the Deponent about nine or ten Years ago enter'd himself in the same Troop at *Dublin* in *Ireland*: That the Troop quartering at *Lutterels-Town*, about five Miles from *Dublin*, the Prisoner sent for the Deponent to his Chamber, and ask'd him where he had serv'd, and amongst other Conversation told him he was the Man that beheaded King *Charles*, and that he had 100 *l.* for it.

Evidence that the Prisoner confess'd he was the Man who cut off the King's Head.

Hulet: How long had you been in the Troop before?

Stammers: About a Fortnight.

Hulet: 'Tis strange! I desire his Examination in *Ireland* may be read, [which being read, agreed with the Evidence the Witness gave in Court] and I desire he may mention the Man I sent for him.

Stammers: I cannot remember the Man.

Captain *Toogood* sworn.

He depos'd, That in *September* 1650, as he was discouraging with Colonel *Hewson* in *Dublin* Castle, Captain *Hulet* the Prisoner came in, and the Deponent observing an extraordinary Familiarity between them; he ask'd Colonel *Hewson*, when *Hulet* was gone, who he was; and Colonel *Hewson* answer'd he had made him his Lieutenant from a Serjeant; that he was a mettled Fellow, and it was he that did the King's Business upon the Scaffold: That

there being a disbanding of Part of the Army in 1653, the Prisoner was continued Captain-Lieutenant in Colonel *Pretty's* Regiment; and that the Deponent discourfing Colonel *Pretty* about the King's Death; *Pretty* said he was assured by Colonel *Hewson*, that *Hulet* either cut off the King's Head, or held it up and said, *Behold the Head of a Traitor*. That at *Carlow* in *Ireland*, the Deponent talking with the Prisoner himself of this Matter, and asking him if he was the Man that cut off the King's Head; the Prisoner answer'd, well, what I did, I will not be asham'd of; if it were to do again, I would do it.

That about half a Year afterwards, talking with the Prisoner of the King's Death; the Prisoner said 'twas true, he was one of the Persons who was disguis'd upon the Scaffold; and that if the King had refus'd to submit to the Block, there were Staples plac'd about the Scaffold; and he had that about him which would have compel'd him. That on another Occasion also the Prisoner said, he should not deny the Business of the King's Death, call him to an Account when they would; and the Deponent added, that he had heard him in *Ireland* call'd *Grandfire Greybeard*.

Page 912.

The Prisoner said, 'twas true he was in the same Regiment with this Witness, but he never discour'd of the King's Death with any one, unless once with *Stammers*; who charging him with being one of the Vizors; the Prisoner answer'd, you do me wrong; and *Stammers* saying, it was a just Act; the Prisoner replied, whether it was so or no, he had nothing to do to justify it.

Walter Davis sworn.

He depos'd, That about two Years since, drinking with Captain *Hulet* in a Tavern at *Dublin*, he desir'd the Captain to resolve him whether the Report was true, that he took up the King's Head and said, behold the Head of a Traitor: The Captain answer'd, it was a Question he never resolv'd any Man, though often demanded; that whoever said it, it matter'd not: I say it now, *It was the Head of a Traitor*.

Hulet

Hulet said, he acknowledg'd his Drinking with this Witness, but denied the Words.

Lieutenant-Colonel *Nelson* sworn.

He depos'd, That discoursing with Colonel *Axtel* about six Years since, and asking him who were the Persons disguis'd upon the Scaffold ; Colonel *Axtel* said, that they would not employ Persons of low Spirits they did not know, and therefore they pitch'd upon *Hulet* and *Walker*, two stout Fellows who were their Serjeants : That *Walker* gave the blow, and *Hulet* held up the Head, and they had either 30 l. a-piece, or 30 l. between them for their Pains ; but that the Deponent heard in *Ireland* from Colonel *Pretty* that *Hulet* gave the Blow ; and that *Pretty* was still living in *Ireland*.

Colonel *Tomlinson* was sworn.

He depos'd, That as he remembred both the Vizors had Garments close to their Bodies, and had Hair on their Faces, the one Grey, and the other Flaxen ; and he thought it was the Man with the Grey who struck the Blow.

Ben. Harris was call'd again.

He depos'd, That both the Vizors were cloath'd alike, in Woollen Frocks, close to their Bodies like Butchers ; one had a black Hat cock'd up, and a black Beard ; and the other a Grey-grissled Peruke, that hung very low ; that he that cut off the King's Head was in the Grey Peruke, and his Beard of the same Colour, if he had any ; and he was about the Size of *Hulet* the Prisoner.

Burden depos'd further, That *Hulet* the Prisoner was not seen upon the Guard either the Day the King was murder'd, or the Day after.

The Prisoner said in his Defence, That he could prove he was in another Place when the King died ; for himself, and seven or eight Serjeants more, were made close Prisoners that Day, because they refus'd to be upon the Scaffold, and that he could prove forty Witnesses, if they would give him time, that it was another Man that did the Fact ; and he insisted, that Colonel *Hacker*, *Huncks*, and *Phayrr*, might be examin'd as to this Matter.

Hulet's Defence.

The *TRIALS* of

Page 913.

The Lord Chief-Baron told him *Pbayre* and *Hacker* were in the same Condition with himself, and so could not be Witnesses; and besides *Hacker* had deny'd he knew who the Person was.

A Sheriff's Officer call'd as a Witness for the Prisoner.

He depos'd, That he was drinking with the common Hangman a little after the King died, and asking him if he did the Fact; the Hangman answer'd, God forgive me, I did it; and I had forty half Crowns for my Pains.

Abraham Smith was call'd.

He depos'd, That as soon as the Blow was given, he was walking in *Whitehall*, and a File of Musqueteers came down, and put the Hangman into the Deponent's Boat, and the Hangman gave the Soldiers half a Crown, and the Soldiers said, Waterman, away with him quickly: That when they had got the Hangman some distance from the Shore, they ask'd him if it was he that cut off the King's Head; and he answered, no, as I am a Sinner to God, and trembled every Joint of him; and on their further examining of him, he told them he was fetch'd by a Troop of Horse, and kept close Prisoner in *Whitehall*, and truly he did not do it, but they had his Instruments: That the Deponent told him he would sink his Boat if he did not tell him true, and the Hangman persisted to deny it with several Proteftations.

William Cox call'd.

He depos'd, That when Duke *Hamilton*, the Earl of *Holland*, and my Lord *Capel*, were beheaded in Palace-Yard, *Westminster*, my Lord *Capel* ask'd the common Hangman, if he did not cut off his Master's Head, and the Hangman said Yes; and told him, that was the Ax, and thereupon the Lord *Capel* took the Ax and kiss'd it; and gave the Hangman five Pieces of Gold, and said, Sirrah, wer't thou not afraid? and the Hangman answer'd, they made me cut it off; and I had thirty Pounds for my Pains,

Richard Abell call'd.

He depos'd, That he heard *Gregory* confess he cut off the King's Head,

A Stranger call'd.

He depos'd, That he heard *Brandon* the Hangman say he cut off the King's Head.

The Prisoner desir'd the Jury might be withdrawn, and he might have a Fortnight's Time to produce other Witnesse; but was told the Jury being charg'd with him, that could not be granted.

Then the Chief-Baron having directed the Jury, they withdrew, and having continued together a considerable time, they return'd and brought the Prisoner in *Guilty*.

After which the Court adjourn'd.

N. B. Gregory and Brandon are the same Persons; one is his Surname, and the other his Christian Name.

Page 914.
Hulet convicted.

October 16. 1660. *Isaac Pennington, Henry Marten, Gilbert Millington, Robert Titchburne, Owen Roe, Robert Lilburne, Henry Smith, Edmund Harvey, John Downs, Vincent Potter, Augustine Garland, Simon Meyne, James Temple, Peter Temple, and Tho. Wayte*, (in all fifteen) were set to the Bar, and a Jury was charg'd with them all.

Mr. Harvey, to save the Court any further Trouble, acknowledg'd, that he did sit in the High-Court of Justice, but said he did not sign the Warrant: And he call'd a Witness or two to shew that he us'd his Endeavours to prevent the Sentence against his Majesty, and what Concern he was under when it was pass'd. And he tender'd a Petition, which he desir'd the Court would present to his Majesty, and intercede in the Behalf of him, his Wife, and thirteen Children: And the Court promis'd to present the Petition to his Majesty.

Harvey's Tryal.

He confesses the Fact.
Page 915.

Isaac Pennington also acknowledg'd, that he sat in the High-Court of Justice, but said he was drawn in by others, and had no Malice to his Majesty; and that he absolutely refus'd to sign the Warrant for his Execution, though much importun'd to do it.

Pennington's Tryal.

He confesses the Treason.

Henry Marten being call'd, said, he did not decline confessing the Matter of Fact, the Malice set aside; and said, he did not do it maliciously, murderously and traitersonly, as was laid.

Marten's Tryal
He confesses the Fact.

Solicitor Gen. My Lord, he thinks a Man may Sentence the King to Death, and sign a Warrant for his

Page 916.

his Execution, meekly, innocently, charitably, and honestly.

But denying he
had any Malice
to the King, the
Witnesses are
call'd.

Marten. According to the little Understanding I have of the Law, there is no Fact that can be nam'd that is a Crime in itself but as it is circumstantiated.

Council. Because he would wipe off the Malice, we shall prove that he did this very merrily, and was in great Sport at the time of the signing the Warrant for the King's Execution.

Marten. That does not imply Malice.

Mr. Ewer sworn.

He depos'd, That he waited on the Prisoner *Mr. Marten* to the Painted-Chamber on the 29th of January 1648, being the Day of signing the Warrant: That he saw a Parchment there with a great many Seals to it; and he saw *Cromwel* mark the Prisoner's Face with a Pen, and the Prisoner mark'd *Cromwel's*, but he did not see any of them set their Hands to the Parchment.

Sir Purbeck Temple sworn.

He depos'd, That at the time the King's Murder was contriving, there came some of the King's Servants to his Father's, to engage the Deponent in a Design of attempting the King's Escape: That in order thereto, it was thought necessary to discover whither the Usurper's Councils tended: And the Deponent, by giving some Money to the Officer of the Painted-Chamber, got in and plac'd himself in the Lobby of the House of Lords, where he could observe what pass'd through a Hole in the Wall: That their Council being met, and Prayers over, there was News brought that the King was landed at *Sir Robert Cotton's* Stairs; whereupon *Cromwel* run to the Window, and saw the King coming up the Garden; and when *Cromwel* return'd to the Board he look'd as white as the Wall, and said to the Board, *My Masters, he is come, he is come, and now we are doing that great Work that the whole Nation will be full of, therefore I desire you to let us resolve here what Answer we shall give the King when he comes before us; for the first Question that he will ask us will be, by what Authority we try him.* To which no Answer was return'd suddenly, but at length *Mr.*

Marten

Marten the Prisoner rose up, and said, In the Name of the Commons in Parliament assembled, and all the good People of England, which none contradicted; and accordingly when they came to the Court in Westminster-Hall, the Deponent heard the King ask them the very same Question that Cromwel had suppos'd he would.

Solicit. Gen. The Prisoner confesses his Hand was to the Warrant for executing the King, but says he did not do it traiterously; I conceive he means it was justifiable.

Marten. My Lord, the Commission was in the Name of the Commons assembled in Parliament; and what a Matter is it for one of the Commissioners to say, let it be acted by the good People of England? And, my Lord, we acted by the then Supreme Authority, and which was so reputed both at Home and Abroad (though your Lordship may think they were not a House of Commons:) And I suppose he that gives Obedience to the Authority in being *de Facto*, whether *de Jure* or no, may be deem'd of a peaceable Disposition, and is far from being a Traitor. That the Statute of Henry VII, indemnifies those who take Arms for a King *de Facto*: And if the Supreme Officer *de Facto* may justify a War, I presume the Supreme Authority of England may justify such a Judicature, though it be but an Authority *de Facto*; and though it be objected, that it was but a third Estate, and a small Parcel of that, yet it was all that was extant. And I have heard Lawyers say, that where Commons are appurtenant to a Tenement, and the Tenement is burnt down, so that only a small Stick remains; the Commons belong to that one Piece as if the whole Tenement were standing. And the King was not then such a King whose Peace, Crown and Dignity were concern'd in publick Matters, he was not then in the Execution of his Offices, but a Prisoner. And I had then, as I have now, a peaceable Inclination, and Resolution to submit to the Government that God has set over me. And I think his present Majesty has the best Title under Heaven, for he was call'd in by the Representative Body of the Nation, and during my

Marten endeavours to extenuate his Crime.
Page 917.

Marten insists that Obedience is due to the Powers de Facto.

The TRYALS of

my Life, (long or short) I shall pay Obedience to him. I confess I did adhere to the Parliament's Army heartily, and my Life is at the King's Mercy, and if he pleases to give it me, I shall have a double Obligation to him: And I desire the Jury would remember, tho' the Prosecution be in the Name of the King, it is as much the Interest of his Crown that the Innocent be acquitted, as that the Nocent be condemn'd.

Mr. Solicitor: Gentlemen of the Jury, What is this at the Bottom but to say, My Fact is such that I dare not call it Innocence, but would have you believe it such? Was it your Intention, Gentlemen, that the King should be tried as the Prisoner mov'd? It will concern you to declare that the People of *England* do abhor his Facts and Principles. Gentlemen, All that he hath said is, That there was an Authority of his own making whereby he becomes Innocent, but we hope out of his own Mouth you will find him *Guilty*.

Millington being brought upon his Tryal, confesses his Guilt.

Gilbert Millington being call'd, said, He should not justify himself, but confess himself guilty every Way, and that he was aw'd by the then present Power; and he presented a Petition in his Behalf, which the Court accepted.

Titchburne comes upon his Tryal, and confesses his Guilt.

Robert Titchburne being call'd, said, He acknowledg'd the Facts he was charg'd with, but said, that he had no more Malice to his Majesty than to his Wife that lay in his Bosom: That he was then young and ignorant of the Laws, and that had he been as sensible of the Crime then, as he was now, he would sooner have gone into a red-hot Oven than into those Assemblies, and desir'd that the Court would be instrumental with the King and Parliament in his Behalf.

Page 912.

Roe comes upon his Tryal, and confesses the Fact.

Owen Roe being call'd, confess'd his sitting in the Court of Justice, and signing the Warrant; but said he was an ignorant Tradesman, not vers'd in Matters of State, but led away by others; and threw himself upon the King's Mercy.

Lilburne brought upon his Tryal, and confesses the Fact.

Robert Lilburne also acknowledg'd the Facts, and urg'd his Ignorance in the Laws as his Excuse, said he was for withdrawing the Court when the King mov'd it; and that the Day the King was put to Death,

Death, he retir'd to his Chamber and mourn'd for it.

Henry Smith also acknowledg'd his sitting in the High-Court of Justice; and laid the Hand to the Warrant was like his, but he did not remember his signing it; that what he did was ignorantly, and as he was aw'd by the Power then in being; and desir'd the Court would become Mediators for him to his Majesty.

Smith brought upon his Tryal, and submits himself.

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Then the Chief-Baron directed the Jury, as to Harvey, Pennington, Marten, Millington, Titchburne, Roe, Lilburne and Smith; and the Jury, having withdrawn a little time, brought these eight in Guilty.

The last eight are convicted.

After which, John Downs, Vincent Potter, Augustine Garland, Simon Meyne, James Temple, Peter Temple, Thomas Wayte, and William Heveningham, were set to the Bar, and the same Jury who try'd the other eight were charg'd with these: And the King's Council having open'd the Indictment, Mr. John Downs, in order to soften his Offence, said, He was thrust into the Number of the King's Judges, but was never of any Consultation about the Thing: That when the King desir'd to be heard before the Parliament, and mov'd so passionately that they would adjourn and consider of his Request, he was the Person who caus'd the Court to adjourn; and that when they were adjourn'd, he press'd that the King's Request might be comply'd with, and he might be heard before the Parliament, and that he enforc'd what he said from an Order of Parliament, that was made after the Act for the Tryal, viz. That upon any Emergency they should immediately acquaint the House; that Cromwel answer'd with a great deal of Storm, Sure he did not know that they had to do with the most hard-hearted Man upon Earth: That it was not fit the Court should be interrupted by one peevish Man, and that the Bottom of it was, he would fain save his old Master: And Cromwel desir'd that the Court without any more ado would go and do their Duty.

Page 920.
Downs brought upon his Tryal; confesses the Fact, but says he endeavour'd to save the King.

Page 921.

The Lord Chief Baron observ'd, That notwithstanding these Convictions, the Prisoner proceeded to sign the Warrant for the King's Execution: To which the Prisoner answer'd, His Life was threatn'd if

The TRIALS of

if he refus'd, and threw himself upon the King's Mercy.

Potter brought upon his Tryal, confesses the Fact.

Page 922.

Garland confesses the Fact; but the King's Council refuse to accept his Confession, and prove he spit in the King's Face.

Vincent Potter confess'd his sitting in the High Court of Justice, signing the Warrant, &c. but said he was not concern'd in the Contrivance; and threw himself upon the King's Mercy.

Augustine Garland confess'd his sitting in Court and signing the Warrant for the King's Execution; but the King's Council said they would not accept of this Confession, for they would prove that he was the Man that Spit in the King's Face; whereupon

Clench was sworn:

He depos'd, That on the Day of the Sentence, as they were hurrying the King away, *Garland* came by, and spit in the King's Face; and the Witness being ask'd if he did it on purpose; he answer'd, *I suppose he did it somewhat suspiciously in that Way.* *Garland* reply'd, He did not know he was near the King, and he was afraid the Witness was an indigent Person; but said, if he was guilty of this Inhumanity, he desir'd no Favour of God Almighty, and that he was never accus'd of any Thing of this Nature till a few Days since: That indeed he was forc'd into the Chair when that Act pass'd for trying the King, That what he had done was out of Fear, being over-aw'd by the higher Powers, and that he never had any Malice, or shew'd any Disrespect to his Majesty or his Friends.

Page 923.
Meyne brought upon his Tryal, confesses the Fact.

Simon Meyne coming upon his Tryal, acknowledg'd his sitting in the High Court of Justice, and signing the Warrant for the King's Execution; but said he was under a Force too, and threatned in case he refus'd.

James Temple confesses the Treason.

James Temple acknowledg'd the signing of both Warrants, and presented a Petition to the Court, which was receiv'd.

Peter Temple confesses his Crime.

Peter Temple acknowledg'd that he sat in Court the Day of the Sentence, and sign'd both the Warrants; but said what he had done was not with a malicious or traitorous Heart, and that was the Reason of his pleading *Not Guilty* at first.

Wayte comes upon his Tryal, and confesses the Fact.

Thomas Wayte also acknowledg'd that he sat in the High Court of Justice, and his Hand being shewn him to the Warrant for the King's Execution, he said,

said, he believ'd it to be his Hand, but said, he was drawn in and trepan'd into the Matter, and deliver'd in his Petition to the King and both Houses of Parliament, which the Court receiv'd.

William Heveningham acknowledg'd his sitting in the High Court of Justice, but said they were under a Force, and the Army were become their Masters; but yet he had the Courage to deny the signing the Warrant for summoning the Court, and that other Warrant for the King's Execution, and had protested against it, and desir'd the Court would intercede for him to the King and Parliament.

Heveningham on the Tryal confesses the Fact.

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Then the Jury withdrew, and after a short Time brought in their Verdict, that *John Downs, Vincent Potter, Augustine Garland, Simon Meyne, James Temple, Peter Temple, Thomas Wayte, and William Heveningham* were Guilty.

The last eight convicted.

After which, *Waller, Fleetwood, Hacker, Axtel, Hullet, Pennington, Marten, Mullington, Titchburne, Roe, Lilburne, Smith, and Harvey,* were brought to the Bar to receive Sentence with those already at the Bar: And it having been demanded of *Sir Hardress Waller*, and the rest severally, what they had to say why Judgment should not pass upon them: And none of them offering any Thing material in Point of Law for arresting Judgment; but throwing themselves upon the King's Mercy, or laying hold on the Benefit of the Proclamation; the Lord Chief Baron proceeded to make a Speech to the Prisoners before Sentence: He told them, That altho' he was to pass Sentence of Death upon them all, yet as to all but three Execution was to be suspended till another Act of Parliament should pass for that Purpose. As to *Mr. Heveningham*, one of the Three, he thought no Order would suddenly be given for his Execution neither; but as to *Axtel and Hacker*, he told them there was no Room for them to hope for Mercy.

Page 925.

Page 926.
The Chief Baron's Speech before the Sentence.

And having again reminded the Prisoners of their Oaths of Allegiance, and that it had been enacted, That neither the People collectively or representatively had any coercive Power over the Person of the King: He shew'd them that by 1 Jac. cap. 1. The Lords and Commons (representing the whole Body of the Kingdom) did declare and acknowledge

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The TRIALS of

an humble and natural Liege Obedience to the King as Supreme, his Heirs and Successors, and in the Name of themselves and all the People did submit themselves until the last drop of their Blood should be spent in Defence of the King and his Royal Posterity: And therefore did acknowledge themselves and all the People of England, as far as they could represent them, to be bound to his imperial Crown, &c.

Page 927.

And that when they took the Oaths of Allegiance, wherein they oblig'd themselves to defend the King, his Crown and Dignity, that was not to be understood only against the Pope, as some would construe it, but against all Men, for the Words were *Otherwise*. That as they did in the Oath acknowledge the King to be Supreme, consequently there could be no such Thing, no Power co-ordinate with him: That in no less than ten several Statutes the Crown of *England* is call'd an imperial Crown, That in 24 *H. 8. c. 12.* it is call'd an imperial Crown, and said that it was subject to none but God Almighty, and so, 16 *Rich. 2. &c.* That the King of *Poland* indeed takes an Oath with a Condition that if he do not govern according to such Rules, the People shall be freed from their Allegiance: But the King of *England* is King before he takes his Coronation Oath, and he does not take it upon any Condition, or is accountable to any but God for his Actions. That the Law says, *The King can do no Wrong*: Not but that the King may have the Imbecilities and Infirmities of other Men, but the King in his single Person can do no Wrong, such as will make him obnoxious to the Laws; but if the King command one to beat me, or dis seize me of my Land, I have a Remedy against such a one, tho' none against the King: The Law preserves the Person of the King untouch'd; but what is done unlawfully by his Ministers, there is a Remedy against his Ministers for: That the King in our Law-Books is stil'd *Caput Reipublice, Salus populi, The Lieutenant of God, &c.* and that there was never such a Blow given the Church of *England* and the Protestant Religion as this; That the *Spencers* Treason, that the King might be compell'd to yield to the Peoples Demands, had been condemn'd by two Acts of Parliament.

ment. That he did not press this as if the King might do what he would, but to shew them that the Person of the King was not to be touch'd: He observ'd that the Prisoners were Persons of good Education, and advis'd them not to continue obstinate, rather than take Shame to themselves; and after some further Exhortations, he pronounc'd Sentence upon all of them as Traitors, except *Heveningham*, who receiv'd Sentence on the 19th of *October*.

Sentence pass'd on sixteen of the Regicides.

The Tryal of Sir HENRY VANE Knt. for High Treason, at the King's Bench Bar, the 2d and 6th of June, 14 Car. 2. 1662.

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THE Indictment was found against the Prisoner by the Grand-Jury of *Middlesex* in *Easter Term*, 1662. And sets forth, That the said *Sir Henry Vane*, not having the Fear of God before his Eyes, &c. did compass and imagine the Death of the King; and to that End, on the 13th of *May*, in the 11th Year of King *Charles II.* he did, together with other false Traitors, assemble, consult, and agree to destroy the said King, and to subvert the establish'd Government, and to hold out and keep his Majesty from the Exercise of his Regal Authority, and did with the said other false Traitors usurp the Government, and appointed Officers, viz. Colonels and Captains of a certain Army that was rais'd against the King: And it further sets forth, That the said *Sir Henry Vane* on the 20th of *December*, in the Year aforesaid, did in a warlike Manner assemble a Multitude of People, to the Number of a Thousand, arm'd with Guns, &c. and did actually levy War against the King: All which is laid to be against the King's Peace, his Crown and Dignity, &c.

The Indictment for keeping the King out of Possession, and levying War against him.

June the 2d, *Sir Henry Vane* was brought to the Bar, and arraign'd, and *Sir Henry* desir'd the Indictment might be read a second Time, which was granted: Then he desir'd to hear it in *Latin*; but this was deny'd, and he was told, that tho' the Records

The Court deny to let the Prisoner hear the Indictment read in *Latin*.

The TRIAL of

cords were in *Latin*, yet the Agitations of Causes in Court ought to be in *English*.

He excepted to the Indictment, for that the Places and Persons mention'd were not sufficiently ascertain'd; and for that the particular Acts of levying War were not set forth. He excepted also to the Jurisdiction of the Court, for that he acted by Authority of Parliament; and insisted, that he ought not to be question'd for such Facts in an inferior Court.

He also insisted on the Act of Indemnity, and said, altho' Sir Henry Vane was excepted; it did not appear that he was that Sir Henry Vane who was excepted.

Where a special Plea is over-
rul'd, the Pri-
soner may plead
aver.

The King's Council offer'd to join issue with him upon the last Exception; and said, if it was found against him it would be fatal; but the Court held, that in Favour of Life, a Man might plead over.

However, Sir Henry did not think fit to abide by that Plea; and his other Exceptions being over-
rul'd, he pleaded *Not Guilty*.

The sixth of June, Sir Henry Vane was brought to the King's Bench-Bar again, and having challeng'd 33 of the Pannel, at length the following Gentlemen were sworn of his Jury:

Sir William Roberts jun.

Sir Christopher Abdy,

John Stone,

Henry Carter,

John Leech,

Daniel Cole,

Daniel Browne,

Thomas Chelsum,

Thomas Pitts,

Thomas Upman,

Andrew Bens,

William Smith.

Mr. Attorney open'd the Indictment and the Evidence; and shew'd, that tho' the Prisoner might be charg'd with any Treason he had committed during the late War, yet they should confine themselves to such Facts as were within the Reign of his present Majesty.

Thomas Lewis and Thomas Turner sworn.

The Warrant dated the 30th of January 1648, and directed to the Officers of the Navy, to issue out Stores for the Summer's Guard of the narrow Seas,

Evidence of Sir
Henry Vane's
issuing a War-
rant to the
Officers of the
Navy, during
the Usurpation.

Seas, was produc'd and shewn to these Witnesses; who depos'd, that they believ'd Sir Henry Vane's Name, which was set to the Warrant, was his own Hand writing.

Ralph Darnel, an Under-Clerk of the House of Commons, sworn.

The Journal Book of the House of Commons being produc'd, Mr. Darnel depos'd, That where-ever Sir Henry Vane is set down to have acted or reported any thing, he was certainly there.

Then the Order of the seventh of February 1648; fol. 653, for creating a Council of State, was read. Fol. 684, 13th of February, The Instructions presented to the House, on which the Council was to act, were read, viz.

1. That you, or any four or more are to suppress all and every Person and Persons pretending Title to the Kingly Government of this Nation, from or by the late King Charles Stuart his Son, or any claiming from or by them, or either of them, or any other single Person whatsoever.

Sir Henry Vane prov'd to be a Member, and to have acted in the Council of State, during the Usurpation.

2. You are appointed to direct the Forces of this Commonwealth, for the preventing and suppressing of Tumults and Insurrections at Home, and Invasions from Abroad; and for these Ends to raise Forces, &c.

To prove that Sir Henry Vane was a Member of that Council, and acted by these Instructions, fol. 893 was read, viz. March 23, 1648, Sir Henry Vane reported from the Council of State an Estimate of the Number of Ships for the Summers Guard of the narrow Seas. March 30, 1649, Sir Henry Vane reported from the Council of State, that 10000 l. Parcel of 20000 l. assign'd upon South-Wales for Delinquency, be allow'd towards setting out the Fleet for the Service of the Parliament; which was order'd accordingly; and to be paid to Sir Henry Vane as Treasurer of the Navy.

Sir Henry Vane Treasurer of the Navy.

Mr. Darnel further depos'd, That he often saw the Prisoner go into the Council of State, and that he continued there all the time the Council were sitting.

William Dobbins and Matthew Lock sworn.

They depos'd, That they saw Sir Henry Vane sit in a Committee of Council several times in the
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Year 1651 and 1652; and that Sir Harry was often in the Chair.

February 12, 1649, read, viz. a new Council of State was chosen, of which Sir Henry Vane was one.

February 13. All the Instructions of the former Year were assented to.

February 22, 1649, was read, Where it appear'd Sir Henry Vane reported the Form of the Oath of Secrecy, to be administer'd to the Members of the Council.

Anno 1651. Several Orders of Council for delivering out Arms, &c. to the Soldiers, and subscribed by Sir Hen. Vane President.

April 2. A Warrant by the Commissioners of the Navy, of whom Sir Henry Vane was one, for fitting out the *Hampshire* Frigate.

May 7, 1659. An Order of this Date produc'd, for appointing a Committee of Safety, of which Sir Harry was one.

May 13, 1659. Sir Henry Vane reported they had confer'd with all the Foreign Embassadors, and that the Commonwealth was in Amity with all Foreign Princes but Spain: Order'd that Sir Henry Vane and others be Commissioners to nominate Officers for the Army. June 17. They nominate Robert Mosse a Colonel, and John Mason to be Governor of Jersey. May 31. Sir Henry Vane reports the Affairs of the two Northern Crowns. September 2. An Order for Redelivery of the City Horfes, sign'd by Sir Henry Vane President.

An Order prov'd by Thomas Lewis and — Falconer, for Swords for Colonel Thomson's Regiment, sign'd by Sir Henry Vane. Three several Letters produc'd, ordering the Delivery of 1200 Arms for the Use of his Regiment.

Marsb sworn.

He depos'd, That Sir Henry Vane being in the Chair, propos'd a new Model of Government: That Sir Henry Vane asserted, First, That the Supreme Power delegated by the People to their Trustees, ought not, in some Fundamentals, to be dispens'd with. Secondly, That it is destructive to the People's Liberties (to which by God's Blessing they were restor'd) to admit any earthly King or single

The Usurpers
in Amity with
Foreign Na-
tions.

Page 921.
A new Model
of Government
propos'd.

Monarchy
deem'd destruc-
tive of Liberty.

single Person to the legislative or executive Power over this Nation; and Thirdly, That the Supreme Power delegated, is not entrusted to the Peoples Trustees, to erect Matters of Faith or Worship, so as to exercise Compulsion therein.

Thomas Pury being sworn, depos'd, That he heard Sir Henry Vane give his Reasons to maintain the two last Propositions.

Thomas Wallis depos'd, That he saw Sir Henry Vane in the Head of a Company in Winchester Park in Southwark; and that he gave the Soldiers five Pounds to drink.

John Cook also depos'd, That Sir Harry order'd the Soldiers five Pounds to drink.

The Evidence for the King being clos'd, Sir ^{Sir Henry Vane's Defence.} Henry enter'd upon his Defence. He cited Coke's *Pleas of the Crown*; and said, that by King was to be understood a King regnant in actual Possession of the Crown; and not a King *de Jure* out of Possession; that an *Inter-regnum* was admitted by the Indictment; and all Ensigns of Authority and Badges of Government were visible in another Name and Stile; and the King's best Friends prosecuted their Suits in another Name.

The Court told him, he would do well to call his Witnesses, and make out his Case, before he insisted on Matter of Law; for *ex Facto jus oritur*; whereupon he desir'd the Process of the Court for his Witnesses, and a further time to answer his Charge; but was told the Jury must deliver the Verdict before they had any Refreshment; and therefore that could not be granted.

Then Sir Harry objected to the Incompetency of the Evidence, as first, that the Witnesses could not swear they saw him set his Hand to the Warrant of the 30th of January, 1648; that it was not sufficiently prov'd he sat in the Council of State; that he was chosen a Member of that Council without his Consent or Knowledge; and that being demanded to take an Oath, approving what had been done to the late King, he refus'd, and caus'd that Clause to be expung'd; that if there were any such Acts of Council as had been read in Proof, the Council acted by Authority of Parliament,

ment, and of such a Parliament as was constituted in an extraordinary Manner, and made indissoluble but by Act of Parliament; that this Parliament was a Power co-ordinate with the King; and whatever he had acted by their Authority could not amount to Treason within the 25th of *Edw. III.* And having cited an Ordinance of Parliament, made in 1642, declaring it Treason to lay any Imputations of Treason to either of both Houses; he said, if these things should now rise in Judgment against him, he fear'd it would shake that Security the People promis'd themselves under the Act of Oblivion; and if he was question'd for what he transacted in that Parliament, he should have the Comfort and Peace of those Actions to support him in his greatest Sufferings; and if he only was excepted, then he must be judg'd for a Crime of which the whole Nation was Guilty. That it was a Case that never before had happen'd; that the Government being entrusted to three Estates, they should to fall out among themselves, that the Nation could not tell which to obey; that on these Emergencies it was impossible to act according to the strict Rules of Law; and the Parliament being by the 17th of *Car. I.* a Power co-ordinate with the King, no Court inferior to the Parliament, by whose Authority these things were acted, ought to be Judges in the Case.

That he was not the first Mover in this Matter; and the three Estates being disjoin'd, he thought it the best Policy to preserve the Government in its Root, viz. the Commons, by whom it was preserv'd, and at length restor'd to its former Course.

He disown'd he had a Regiment; and as to the Reports of Messages he made, he said nothing could be concluded from them, the Judgment of the Reporter not always going along with them; and that he always lov'd the Constitution as set forth in our Law Books.

That the Warrants mention'd, were sign'd in the Name, and by Order of Council; and his Hand who subscrib'd them, did not signify he was active, but passive to the Commands of the Council;

cil; and he sum'd up his Defence in these Queries,
viz.

1. Whether the *collective* Body of the Parliament can be impeach'd of High-Treason?

2. If one who acts by that Authority can be said to commit Treason?

The Sum of Sir
Henry Vane's
Defence.

3. Whether things done by their Authority can be question'd in an inferior Court?

4. Whether Treason can be committed against a King *de Jure* out of Possession?

5. Whether Facts done in *Surry*, in another County, may be given in Evidence to a Jury of *Middlesex*? and he desir'd Council to argue these Points.

The King's Council reply'd, that they admitted he acted in the Name, and by the Authority of the Council of State; and that the Council acted by Authority of what he call'd a Parliament. And they produc'd another Warrant of Sir *Henry Vane's*, when he was of the Committee of Safety (who had not any pretence of Authority of Parliament) for sending down Arms after *Lambert*, to oppose the present Duke of *Albermarle*.

Sir *Harry* then call'd *William Angel*, and other Officers of the Regiment which went under his Name; who depos'd, that having recourse to Sir *Harry* for Orders, about *October* 1659, Sir *Harry* commanded them to desist, and shew'd a Dislike to their Proceedings.

And as to the Evidence that had been given against him of Facts in *Surry*, he desir'd the Judges would seal a Bill of Exceptions; for that he took it that such Evidence could not be given to a Jury of *Middlesex*; but they over-rul'd the Exception, and refus'd to seal any such Bill of Exceptions.

Evidence may
be given of
Treason in an-
other County
than that where
the Prisoner is
indicted.

And Mr. Solicitor *Finch* reply'd, as to that Pretence of an Authority of Parliament, not an eighth Part of the House of Commons were permitted to sit when these Treasons were committed; and that the acting under the Authority of such an End of a Parliament, under such a Violation, was rather an Aggravation of his Offence, than an Excuse; and besides that, the Parliament was dissolv'd by the

Mr. Solicitor
replie to Sir
Henry Vane's
Defence,

The TRIAL of

Death of the late King, notwithstanding the 17th of Car. I. for the Writ for calling the Parliament runs *ad tractandum nobiscum*, which was meant in the King's natural as well as his political Capacity; and it was absurd to say, that the Acts of King Charles I. should be his Acts in the Time of King Charles II. And *Lastly*, That one King could not impose a Parliament upon another.

Treason may be committed against a King out of Possession.

The Long Parliament dissolv'd by the King's Death.

No Privilege of Parliament for Treason or Breach of Peace.

Page 922.

And as to that Question, If a House of Parliament can commit Treason; if they depart from that Allegiance they have sworn at their first Meeting, they are impeachable for it: And as to the Co-ordination of the Parliament there was no such thing. As to the King's being out of Possession, *Watson* was indicted for Treason against King *James*, before he enter'd *England*; nor did it avail him to say, that the King was never in possession of the Crown.

Mr. J. Windham held, that the Act of 17 Car. did not give that Parliament any greater Authority than other Parliaments, tho' it made them more durable. And he held also, that the Parliament was absolutely dissolv'd by the King's Death; as if a Marriage should be enacted to continue till it was dissolv'd by Parliament, it would nevertheless be dissolv'd by the Death of either Party; and that it was not the sitting of a few Members within those Walls, when the Majority was forc'd out, that could denominate them a Parliament: That whether a Parliament might commit Treason, was not the Question, but whether a few of the House, shutting out their Fellows, and usurping the Government, were not Traitors. That the Distinction between the natural and politick Capacity of the King was the Treason of the two *Spencers*. And *Lastly*, That Privilege of Parliament could be no shelter for Breach of the Peace, much less for Treason: That to compass the Death of the King, in his natural Capacity, was Treason; and so it was in his politick Capacity, viz. to conspire to depose him. And *Mr. Justice Twisden*, and the Lord Chief-Justice *Foster* declar'd they were of the same Opinion with *Mr. J. Windham*.

Then

Then the Jury withdrew, and within half an Hour brought in their Verdict that Sir Henry Vane was Guilty.

To this Tryal are added some Papers of Sir Henry Vane's, said to contain the Substance of his Defence; but he only enlarges on some Heads he had before insisted on at his Tryal; particularly, on the Parliament's being a Power co-ordinate, if not superior to the King; and gives some Historical Account of the various Changes of Government during the Usurpation, things more proper for a History than a Tryal, and therefore not thought fit to be inserted here.

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Page 938.

The 11th of June, Sir Henry Vane was again brought to the Bar, in order to Judgment; and it being demanded what he had to say, why Judgment of Death should not pass upon him, he desir'd the Indictment might be read in Latin, and that he might have Council to argue his Exceptions to the Indictment; but this was denied.

Sir Henry Vane call'd to Judgment.

Then he offer'd a Bill of Exceptions to the Judges to seal; but was told this was never done in capital Cases; and desiring the Judges might severally declare their Opinions in this Case, they unanimously declar'd it ought not to be allow'd. Being over-rul'd in this, he desir'd the Petition of the Parliament to the King, that his Execution should be respited, might be read, with his Majesty's Answer, which was read accordingly; but the Lord Chief-Justice Foster told him, that God, tho' full of Mercy, extended it only to the Penitent.

Offers a Bill of Exceptions, but is told it is never admitted in Capital Cases.

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In another Paper, call'd Sir Henry Vane's Reasons for arresting Judgment, besides what he offer'd at his Tryal, he urges the following Reasons for it: That by the third Part of Coke's Institutes, fol. 7. and the Statute 11 Henry VII, cap. 1. whatever was acted for a King *de Facto* ought not to be question'd by a King *de Jure*: And as it was objected, here was no King in this Case; he reply'd, that those who had the Power and Exercise of the Royal Jurisdiction, as to Peace and War, Coinage of Money, Life and Death (which are the highest Ensigns of regal Authority) must be admitted to be the Powers regnant, tho' they want the Name of King; and that these were as well within the Statute of 25 Edw.

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No Treason to assist a King *de Facto* against a King *de Jure*.

Sir Henry Vane urges that this Law ought to be extended to the Powers regnant, whether the Government be in one Person or more.

III, as a Queen is adjudg'd to be; and every Sovereign Prince, tho' he bear but the Title of Lord, as was the Case in *Ireland*, before our Princes took the Title of King. And if so, why not where the Government is in more Persons than one, that *de Facto* exercise the Royal Power and Sovereign Authority, under what Name or Title soever? surely the Reason and Equity is the same, if the Powers regnant have the Thing, tho' they want the Title; and where the Reason is the same, there is the same Law, as is a known Rule; now there is the same reason the Subject should be indemnified, when he acts under a Sovereign Authority, which has not the Name of King, as if it had: That the many Kings in *England* during the Heptarchy would have been understood to have been within the Statute, if it had been then in force; that this Law was made for the Benefit and Security of the Subject, whom the Law does not require to examine into the Rights of Sovereignty; That it was made to secure the Subject against all dormant Titles, that they might safely pay their Allegiance where they receiv'd Protection; and might not be in danger of being destroy'd by two Powers at the same time; for the Power *de Facto* will be obey'd, and make it Treason to do otherwise, be it right or wrong; and was the Subject at the same time in danger of committing Treason against a Power *de Jure*, he was in a miserable Condition; if he be loyal to the King *de Jure*, he shall be hang'd by the King *de Facto*; and if he be faithful to the King *de Facto*, he shall die by the King *de Jure* when he recovers Possession.

To remedy this, the Statute of 11 *Henry VII* was made, after the Differences between the Houses of *York* and *Lancaster*; that his Case was either the same with that, and then he desir'd the Benefit of that Statute; or else it was new, and what had never happen'd before, and then he desir'd (as 'twas provided by the 25th of *Edw. III.*) that it might be refer'd to the Parliament, and not be adjudg'd in this Court. That his present Majesty was, by the Indictment, admitted to be out of Possession; and if so, then either there was some other

He urges that Allegiance is due to those from whom we receive Protection.

other King, or what was equivalent, some Sovereign Power in actual Possession and Exercise of the Government, or there was none; if there was a Sovereign Power, then was there a King *de Facto*, and so no Treason could be committed against him who was King *de Jure* only; if it be said there was no Sovereign Power, then the Government was dissolv'd, no Allegiance was due to any Person, and so no Offence could properly be Treason within the Statute.

And had the Protector had the Name and Stile of King, it was admitted that no Treason could have been committed against the King *de Jure*; and he hop'd they would not take away his Life upon such Niceties, because a usurping Protector was not cloath'd with the Title as well as Power of a King; and that the Protector (or any Usurper) taking or not taking the Title of King, in case he have the Power, could not alter the State of his supposed Crime.

Sir Henry goes on extolling the Covenant, justifying the Parliament, and condemning King Charles I. and his Adherents; and said, he found nothing would satisfy the present Government, but in his Person, to condemn those who adher'd to the Parliament, that they might be render'd Murderers and Rebels to Posterity upon Record in *Westminster-hall*; and this, he said, must inevitably have follow'd, if he had voluntarily given up this Cause, without asserting their and his Innocency, by which he should have pull'd that Blood upon his own Head, which now he was sure must lie at the Door of others; and in particular of those that knowingly and precipitately should embroe their Hands in his innocent Blood, under whatever Form or Pretext of Justice.

He said he beg'd Pardon for this Freedom, and hop'd he should be excus'd; for that not only his Estate and Life were at Stake, but what was more to him than Life, the Concerns of thousands who were in their Graves, and of all Posterity in time to come; that he had not so learn'd Christ to be afraid of those that can kill the Body, and could do no more; that many of the Heathens had render'd

render'd their Names famous to Posterity, by their Contempt of Death. *Socrates*, that divine Philosopher, could not be prevail'd on to make a Defence, when he was charg'd with acknowledging one only God, but chose to put it on the Determination of his Judges, whether he should live or die, not knowing which might be best for him; and professing, that, for ought he knew, it might be much to his Prejudice and Loss, to endeavour a longer Continuance in this Life.

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Sir Henry Vane
insists that the
King had gran-
ted him his Life
on the Petition
of the Parlia-
ment.

Sir Harry concludes, that the two Houses having petition'd his Majesty to spare his Life, and his Majesty having granted their Petition, he thought he had a Security equal to an Act of Parliament; for that was no more than a Petition to the King and his Assent to the Bills drawn up by them; but he observ'd that none were more forward to absolve the King from this Grant about his Life, than those who had been most zealous in promoting the Petition in his behalf.

Sentence pro-
nounc'd on him
as a Traitor;
but he is be-
headed.

The Prisoner having offer'd what he had to say, Sentence was pronounc'd on him as a Traitor; but he had the favour of being beheaded.

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*The Tryal of JOHN JAMES for High-
Treason, at the King's-Bench-Bar, the
14th of November 14 Car. II. 1662.*

WHEN he was arraign'd, he held up his Hand with his Glove on, which he was made to pull off.

The Indictment
for preaching
Treason at a
Conventicle.

The Indictment set forth, " That the said John
" James, not having the Fear of God before his
" Eyes, &c. did compass and imagine the Death of
" the King, the Subversion of the Government,
" &c. and to that end, that he, being assembled
" with other false Traitors in *Bulstake-Alley* in the
" Parish of *White-chappel* in the County of *Middle-*
" *sex*, did speak and publish these treasonable
" Words following, viz. *That the King was a bloody*
" *Tyrant, a Blood-sucker, and Blood-thirsty Man, and*
" *his Nobles the same; that the King and his Nobles had*
" *sed*

"shed the Blood of the Saints at Charing-Cross, and the
 "Blood of the Covenanters in Scotland: That the King
 "was brought in to this End, to fill up the Measure of
 "his Iniquity; and that the King's Cup of Iniquity had
 "fill'd more within this last Year than in many Years be-
 "fore, and he wail'd that they had not improv'd their Op-
 "portunity when they had Power in their Hands: That it
 "would not be long before they had Power again, and then
 "they would improve it better; and he bemoan'd the
 "Apostacy of the People of God, and said they had not
 "fought the Lord's Battles thoroughly; but when the Lord
 "should give his Work into their Hands again, they would
 "do it better, and that the Death and Destruction of the
 "King grew very near." All which is laid to be done
 against the King's Peace, his Crown and Dignity, &c.

The Prisoner insisted on having a Copy of the Indictment before he pleaded; but the Court telling him he could not have it in this Case, he pleaded Not Guilty: And after some frivolous Exceptions to the Form of Proceedings, he put himself upon his Country, and afterwards was carried to the King's Bench Prison..

The 19th of November, 1662, the Prisoner was brought again to the King's Bench Bar in order to his Tryal; and a Jury being sworn, and charg'd with him, Mr. Serjeant Kelynge open'd the Indictment, and Mr. Attorney shew'd the Aggravations of his Crime; and having given a brief Relation of the late Troubles, he observ'd that they proceeded from the seditious Discourses of some such discontented Preachers in those Times. Then the King's Witnesses were called; and first,

Page 948.

John Tipler was sworn:

He depos'd, That on a Saturday about two in the Afternoon, being in a Yard adjoining to the Meeting-house, he did thro' a Window see the Prisoner John James in the Pulpit, and heard him speak the Words laid in the Indictment; and added, that the Prisoner did wonderfully adore Oliver Cromwel, saying that every Finger of his was a Champion; that the Deponent immediately went to Alderman Chard, a Justice of Peace, who came and seiz'd James in the Pulpit, and took all the Men who were in the Con-

Evidence of the Prisoner's uttering the Words laid in the Indictment.

venticle,

venticle, but let the Women go ; and that he committed such of the Men as refus'd the Oath of Allegiance.

Page 909.

Alderman Chard sworn :

He depos'd, That upon Tipler's Information he came with a Constable, &c. and seiz'd John James in the Pulpit, as Tipler had depos'd ; and that there were thirty or forty People assembled to hear him.

Another Witness sworn :

He depos'd, That being at Tipler's House he heard very loud speaking, whereupon he went out and heard the Preacher say, *That the Lord had a great Work to do for his People, and that they were the People that must do it ;* but he could not be positive the Prisoner was the Person that spoke them.

Bernard Osburn sworn :

He depos'd, That he was within the Meeting-house, and heard the Prisoner say, *That King Charles was a blood-thirsty tyrannical King, &c. as in the Indictment ;* but being ask'd if those were the very Words, he answer'd, He could not say they were the very Words, but they were to that Effect.

The Prisoner's
Defence.

Then the Prisoner call'd a Witness, who depos'd that Osburn had said, *He did not only swear he knew not what, but that he was frighted into what he swore :* But Osburn denied in Court, upon his Oath, he had said any such Thing.

The Prisoner call'd four other Witnesses, who were at the same Meeting, who depos'd, That the Words in the Indictment were not spoken by the Prisoner.

Page 910.

The Prisoner objected to the Form of the Indictment, which charg'd him with acting maliciously, wickedly and traiterously, and by the Instigation of the Devil, &c. and said, *He did in the Fear of the Lord deny it,* for that he had no malicious Thought against the King, but pray'd for his Soul : He said he had never been in any publick Employment against his present Majesty or his Father : That he was an inconsiderable Person, and liv'd by his Calling, and could not by any Construction be deem'd Guilty of compassing the King's Death : That as to the Words laid in the Indictment, he deny'd he spoke them, or any other Words to that Effect ; and that he was

so

so far from contending for *Cromwel's* Power, whom God had so eminently wip'd off, that he had always declar'd against that Power, and suffer'd under it: He bid the Jury have a Care of shedding his innocent Blood; and told them that the Lord Jesus Christ was King of Nations as well as Saints, and that the Government did of Right belong to him, &c.

Here the Chief Justice interrupted him, and ask'd him if he thought he was in his Conventicle at *Whitechappel*, and order'd the Act for the Preservation of the King's Person to be read to him; wherein it is said, That *Whoever shall by printing, preaching, writing, &c. endeavour to levy War against the King, or compass his Death, &c. shall be adjudged Traitors.* And the Court told him it was the Intention of the Heart that was the Treason, the printing, preaching, &c. was but a Manifestation of the Treason.

Then the King's Council sum'd up the Evidence, and told the Jury, That tho' the Substance and Effect of the Words laid in the Indictment were prov'd, it was not necessary to prove the very Words; and observ'd, that tho' the Prisoner's Witnesses denied that he spoke those Words, yet they had not depos'd what he did say; and that as to his Integrity and Innocence, the vilest Miscreant would never have receiv'd the Reward of his Doings, if his own Excuse or Protestations could have sav'd him: That the Prisoner was not question'd for his Religion or Conscience, but for horrid Treason and Rebellion against the meekest King on Earth, who had lately extended his Mercy to the whole Nation, and reduc'd them again to a State of Innocence: That the Men of these Principles did not only endeavour the Destruction of the Monarch, but of Monarchy itself, and that the Prisoner in his pernicious Sermon press'd his Doctrine on the Peril of their Salvation, and now would affright the Jury with his innocent Blood; but they would find, if his Blood was rightly and swiftly pursu'd, it would be a Means of preventing the shedding the Blood of Thousands.

Held that the very Words (suppos'd to be Treason) need not be inserted in the Indictment.

Page 95r.

Then

The Chief Justice directs the Jury.

Then the Chief Justice directed the Jury, and told them, That it was these Principles and this Spirit that put the Nation in a Flame before, and that there was no Treason comparable to that which was cover'd with a Pretence of Religion.

James is convicted.

Judgment must not be given in the King's Bench the same Day the Prisoner is convicted.

Page 952.

The Jury being withdrawn about a Quarter of an Hour, return'd, and brought the Prisoner in Guilty.

Mr. Attorney thereupon demanded Judgment against the Prisoner; but the Court said they never gave Judgment the same Day the Prisoner was convicted, and he was remanded to the King's Bench Prison.

Sentence pass'd upon James as a Traitor.

The 22d of November, the Prisoner was again brought to the Bar. And it being demanded what he had to say, why Judgment of Death should not pass upon him according to Law; He answer'd, out of the Prophet Jeremiah, *That if they put him to Death, they should surely bring Innocent Blood upon themselves, and upon this City*: And added, *That precious in the Sight of the Lord was the Death of his Saints, &c.* After which, Sentence was pronounc'd on him as a Traitor.

Between the Prisoner's Conviction and Condemnation, his Wife deliver'd a Petition to the King, but obtain'd no other Answer than, *That Mr. James was a sweet Gentleman*; and on Mrs. James's pressing the King further, he answer'd, *He is a Rogue, and shall be hang'd.*

The Tryal of THOMAS TONGE, GEORGE PHILIPS, FRANCIS STUBBS, JAMES HIND, JOHN SELLERS, and NATHANIEL GIBBS, for High Treason, at the Old-Bailey, London, the 11th of December, 14 Car. 2. 1662.

Page 953.
The Indictment for conspiring to seize the King's Person, the Tower, White-hall, &c.

THE Indictment sets forth, ' That the Prisoners not weighing the Duty of their Allegiance, &c. did compass and imagine the Death of the King, the Subversion of the Government, &c. and to that End they, together with other
' false

' false Traitors, did on the 31st of October last, at
' the Parish and Ward of St. Michael's Cornhill, Lon-
' don, assemble, consult, and agree to depose the
' King, and alter the Government, and to surprize
' the King's Person, his Palace of White-hall, &c.
' against the King's Peace, his Crown and Dig-
' nity, &c.

A Jury being sworn and charg'd with the Priso-
ners, Sir Edward Turner open'd the Indictment, and
Mr. Serjeant Magnard open'd the Evidence; after
which the King's Witnesses were called; and first,

Mr. William Hill was sworn:

He depos'd, That about the Middle of October
last he met John Baker, (now indicted of High Treas-
on) who told him the King had lately been a hunt-
with a small Guard, and that he would have been
one of the Twenty who would have slain that out-
landish Dog. That two Days after Baker fetch'd the
Deponent out of his Bed, and they went with some
others, (among whom the Prisoner Hind was one)
to the Ship Tavern and discours'd of the Matter,
and that all Interests were agreed, Fifth-Monarchy-
Men, Anabaptists, Independants, and fighting Qua-
kers, and the congregational Churches were consent-
ing, and were resolv'd to endeavour their Delive-
rance from their Adversaries at White-hall, and much
Discourse they had to that effect: That at another
Time he met Stubbs, Hind, Tonge, and others, and Tonge
told them they were sure of Windsor-Castle, and that the
head Gunner and Serjeant were in the Design, and that
five hundred of their Friends were in and about Wind-
sor ready to assist in the surprizing of it: That Tonge
also propos'd something concerning the taking the
Tower, and discours'd of what Arms and Men were
prepar'd for the Design: That at the Ship at Bride-
wel-Dock he met the Prisoner Gibbs and his Brother,
and that Gibbs the Prisoner having had some Dis-
course with his Brother privately, told the Compa-
ny after his Brother was gone, That the Council of
Six was broken up, and all the Business was settled,
and Ludlow was Commander in Chief, and they had
provided Horse and Arms to be ready against Al-
ballow's Eve: That Philips said they were up in the
West; and if they were not, he wish'd they were,
and

Page 954.

Page 955.

The Dissenters
of all Sorts join
in a Conspiracy
against the
King.

Page 958.

and here too: That as to *Sellers*, the Deponent was to have had thirty Arms of him, and that *Riggs* urging *Sellers* about it, *Sellers* told him he had deliver'd out five hundred Arms the Night before, and that forty of their Friends were forc'd to go away without, but that in two or three Days they should have more laid in: That there was a Declaration read against Popery, Monopolies, and for Liberty of Conscience, and a free Commonwealth, and that five thousand Letters were contriv'd to be dispers'd in Town and Country, pretending that the Papists design'd a general Massacre of the Protestants on *Alballow's Eve*, and advising the People to prepare for their Defence; and this was to serve as a Colour for their intended Insurrection.

Serjeant *Kelvinger*: Was there any Discourse of taking *Whitethall*?

Hill: Yes, and *Hind* and one *Brown* were there; and afterwards we discours'd of it at *Stubbs's* House, and they invited a Sea Captain to assist them, who was to come down with a Party by *Charing-Cross*, and another Party was to come up by the *Cockpit*; and they were to kill the Duke of *Albemarle*, and the Lord-Mayor, Sir *Richard Brown*; and it was propos'd to get into *Whitethall* by the *Privy-Garden*.

That the Night before they were taken, the Deponent was with the Prisoners *Stubbs* and *Gibbs*, and one *Thomas* at *Blackfryers*, and it was discours'd that they would make an End of all Kings, Princes, and Dukes, that they might have a free State, and be troubled no more with any such Persons, or with lawn Sleeves or Surcingles: That *Stubbs* assur'd them there was a great Party in *East-Smithfield* right for the Work, and had their Arms.

Council: Did you hear any Thing of the Discovery of the Word?

Hill: I understood that *Torge* was assur'd by *Phillips*, who was a Serjeant of the Train'd Bands he should have the Word the Night of the intended Insurrection.

Council: If they had taken the King, What was they do with him?

Hill: I don't know.

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Hill: He was to have the same Quarter as *Ludlow*, if he was taken, as *Stubbs*, *Gibbs*, and *Tonge* said.

Council: Who were nam'd to be of the Council of Six?

Hill: Colonel *Danvers*, *Philips*, *Nye* the Minister, *Lockier*, and one *Cole*, it was said, were five of them; And I heard a Party of Horse were to come into Town the Night before the Insurrection, and they said they had four hundred Friends in *Dorsetshire* they were sure of, and several Cases of Pistols were sent down by the Carrier, and at this Meeting at *Blackfryers* the Prisoners *Gibbs*, and *Stubbs*, were present, and *Tonge* assur'd us of Colonel *Kendrick* in *Kent*.

Page 957.

Gibbs: Did I ever receive or deliver any Pistols for this Use?

Hill: I did not say he did; but that they discours'd of several Arms sent to their Friends in *Dorsetshire*.

Page 958.

Stubbs: There were Arms spoken of, but Mr. *Hill* spoke of them.

Hill: I do acknowledge, that afterwards I told them I had some Arms my self, and 200 l. towards carrying on the Design, and some of the Bench know the Reason of my speaking of it.

Stubbs: *Hill* advis'd that they should fall upon Sir *Richard Brown* as an Enemy to all honest Men.

Tonge: Who was there when I talk'd of the five hundred Men at *Windsor*?

Hill: I was at your own House, and there were *Ward*, *Stubbs*, *Riggs*, and *Hind*.

Edward Riggs sworn:

He depos'd, That he was at the Prisoner *Tonge's* House, and *Stubbs* also was there; and *Tonge* told them he had been down at *Windsor*, and spoke with the Gunner and Serjeant there, and they had promis'd to be ready upon Notice: That *Tonge* at another Time told him, That he had formerly met with one *Cole* and others, and they discours'd of the ill Government there was in Church and State; but when they could not agree in their Schemes, *Cole* went beyond Sea.

Page 959.

Sir *Henry Finch*: Were you ever at any Meeting where there was a Discourse of surprizing the King, and altering the Government?

The TRIALS of

Riggs : The Friday before we were taken, I think it was the 24th of *October*, there was some Discourse concerning the taking *Whitehall* and the *Tower*, and *Hill*, *Tonge*, *Stubbs*, *Ward*, *Hind* and *Baker* were present ; and *Tonge* said, He thought the best Way to take the *Tower* was when *Sir John Robinson* (the now Lord-Mayor) went thither late in the Evening : That a Party should follow his Coach in, and it might easily be done : And that *Baker* then added, It was necessary the King should be surpriz'd, and that no Quarter ought to be given ; and for his own Part, he would neither give nor take any : And *Baker* said that with five hundred Horse and Foot he would undertake to force *Whitehall* by the Way of the *Privy-Garden*, and secure the King's Person.

As to *Philips*, He depos'd that *Philips* told him there were three hundred Arms in the *Artillery-Garden*, and that he being one of the *Artillery-Company*, could easily secure those Arms ; and that if the *White Regiment* happen'd to be out that Night the *Insurrection* was to be, he would not fail to procure the Word ; but that *Philips* afterwards declar'd to the Deponent he would have no Hand in the Matter.

He depos'd further, That he heard *Sellers* say that some Arms were to be given out.

Page 960.

That *Gibbs* said that the News was *Ludlow* was in Town, and that the Council of Six was broken up, and they had sent Messengers into the Country to give Notice, and make their Interests.

Finch : Did you ever hear of a Massacre and Rising by the Papists ?

Riggs : I saw a Copy of the Letter the last Witness mention'd concerning it.

Mr. Attorney : What did you hear of surprizing the King at *Camberwell* ?

Riggs : *Philips*, *Tonge*, *Stubbs*, and myself, being together, and discoursing of the King's going abroad, *Philips* said the King was to come from *Hampton-Court* to see the Queen Mother at *Greenwich*, and that then he might be surprized ; and *Tonge* said there might be such an Opportunity twice every Week.

Mr. Brad-

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Mr. Bradley sworn :

He depos'd, That one *Friday* Night he was at *Tonge's* House, (who was a Strong-water Man by *Tower-ditch*) and that the Prisoner *Stubbs* and others were there, and they had some Discourse how to surprize *Whitehall* ; some said they might go thro' General *Monk's* Guard; others said they might go down by *Charing-cross* ; but *Tonge* said that could not be, because there were two Guns at Bottom which commanded that Street, and he thought the only way was to bring a Party through *King-street*, and so into the *Privy-Garden*.

And he depos'd further, That he had several times discours'd with *Hind* and others of altering the Government, surprizing the King, the Duke, and the General, and as many more of the Council as they could lay their Hands on ; and of the surprizing *Whitehall*.

That *Gibbs* inform'd them the Design was ready, the Council broke up, and Messengers sent to give Notice ; and that *Ludlow* was in Town, and to be General.

Page 961.

Tyler sworn.

He depos'd, That he had been several times in the Company of *Tonge*, and others, and heard them discourse of securing *Whitehall*, and of dismounting the two Guns there ; and what a great Piece of Service it would be to surprize the King, the Duke, and the Lord *Albemarle* ; and *Tonge* said he had a Friend a Courtier who would give him Notice when the King went a Progress or a Hunting, and it was easy to take such an Opportunity : And *Tonge* said he serv'd the Suttlers in the *Tower*, and was acquainted there, and he would undertake about ten or eleven at Night to surprize the *Tower* with forty Men ; he said he also serv'd the Suttlers at *Windsor* with Tobacco, &c. That he was acquainted with the Soldiers, and particularly held Correspondence with an old Gunner there. As to the Prisoner *Philips*, he knew nothing but what he had by Hear-say from others.

Serj. *Maynard*. Do you know any thing of surprizing the King's Council, or *Whitehall*, or altering the Government ?

Page 962.

U 2

Tyler.

Evidence of a
new Scheme of
Government
laid by the Dis-
senters.

Tyler. *Tonge* said he was at several Meetings at the *Wheat-sheaf* and *Sheers*, and it was debated, and thought expedient that the old Parliament should be chosen again; i. e. so many of them as had approv'd themselves faithful from first to last to a Commonwealth Interest, especially in the Times of Declension: That none should be capable of electing or being elected, but such as had so approv'd themselves: Provided, that this intended Parliament should have no Power in Things of an Ecclesiastical Nature, to impose any thing upon the Consciences of the People; and that it should be High-Treason to assert the Interest of a King, House of Lords, or single Person: And it was much urg'd, that there should be an uniting of all Interests, (*viz.*) Quakers, Fifth-Monarchy-Men, Anabaptists, Independents, Presbyterians and Levelers; and every one oblig'd themselves at this Consult to see what Interest he could make among the Presbyterians, because they look'd upon them as the Persons who had most Money and Strength.

Page 961.

Solicit. Gen. Did you hear at these Meetings of any Rising intended in the Country?

Tyler. Yes, in several Counties of *England*; it was assured the Country was ripe, and forward for Action; and that they were in dread of a Massacre by the Papists on *Allhallows-Eve*.

Here *Philips's* Examination was read as Evidence against him, (*viz.*)

Philips's Exa-
mination read
against him.

" He saith he knows one *Riggs*, late a Chaplain
" to *Blake*, but now Clerk to a Brewer; and that
" *Riggs* told the Examinant there would be a
" Rising of divers godly People in Arms, for
" Preservation of Religion, about the Time the
" Queen came to Town; and that they intended
" to seize the King's Person about *Camberwell*, as he
" came from the Queen-Mother's at *Greenwich*;
" and the Examinant asking *Riggs* afterwards why
" it was not done; he said they were not then ready,
" because the Congregational Churches and they
" were not fully agreed, but that Things were
" now near ready both in Town and Country.
" That *Riggs* carry'd the Examinant to *Tonge's*, who
" had

" had been an old Army Captain, but now sold
 " Tobacco and Brandy by *Tower-Ditch*; and that
 " *Tonge* told *Riggs* that he had prevail'd with some
 " of the Soldiers at *Windsor* to deliver up that
 " Castle; and *Riggs* said he was going down to
 " surprize two Castles in *Kent*; and *Tonge* asking
 " who should lead the Men that were to rise,
 " *Riggs* replied *Ludlow* was appointed for that Work;
 " and *Riggs* said there was a Council of Six, who
 " manag'd the Design, and sat but one Day in a
 " Place, and would not be spoken with but by the
 " Agitators of each County, who were employed
 " to prepare all Parties in the several Counties;
 " and that these six were of several Congregations
 " and Opinions, to the end all Parties might unite.
 " That *Riggs* and *Tonge* desir'd the Examinant (be-
 " ing a Serjeant of the Artillery) to furnish what
 " Men and Arms he could, which he says he never
 " intended to do; but acknowledges he did send
 " Word to several Conventicles that the Train'd-
 " bands were coming to seize them, upon which
 " the chiefeft of them made their Escape before
 " the Soldiers arriv'd: And the Examinant ac-
 " knowledges he was so far deluded by their fair
 " Speeches, that he did promise to give them the
 " Word when the general Rising should be; in
 " which Rising all the said Churches promis'd to
 " join, and the Fifth-Monarchy-Men were to lead
 " the Van.

" That *Riggs* told him they had a Declaration
 " ready to sling among the People against Bishops
 " and Common-Prayer, and that Liberty of Con-
 " science was held forth therein; but before this
 " Declaration they were to surprize the King. That
 " one *Baker* also incited the Examinant to assist in
 " this Work, and told him that Arms and Powder
 " were distributed in several Places, and their
 " Friends were now ready in all Countries, only
 " waiting for the Day. That *Riggs* also acquaint-
 " ed him with the Design of seizing the *Tower*,
 " when Sir *John Robinson* should come Home late."

Page 984.

A Report
spread all over
England that
the Papists
would massacre
the Protestants
on such a Day.

Sir William Morrice and Sir Henry Bennet, Secretaries of State, were sworn.

They depos'd they had receiv'd Letters from several Counties, that a Report was spread about that the Protestants were to have their Throats cut by the Papists on such a Day; and that these Rumours were in order to incite People to join with the Disaffected.

Sir John Talbot was sworn.

He depos'd, That these Reports occasion'd great Disturbances in *Warwick shire* and *Worcestershire*.

Mr. Hodges and Sir John Weld sworn.

They depos'd, that the same Reports were in *Dorsetshire* and *Shrewsbury*, the latter end of *October* last, and several Persons were taken up about it.

The Prisoners
Defence.

Page 965.

The Prisoners in their Defence denied they had been engaged in any form'd Design against the Government. They said they had heard some such Discourses as had been testified, but they heard them only as common News, and had no ill Intention; and that *Hill* and *Riggs*, two of the Witnesses, had confess'd themselves guilty of the Crimes they charg'd on them, and therefore they suppos'd they were not competent Witnesses against them.

Page 966.
Accomplices
lawful Witnesses.

Concealing of
Treason is
Treason, if the
Party conceal-
ing it discovers
any Assent to
it.

Sir Orlando Bridgman told them that Accomplices were lawful Witnesses till they were convicted; and besides that, here were some of the Witnesses who were not Accomplices; and that there were several corroborating Circumstances to support the Testimony of those that were. And that if a Person was present where Treason was spoken, and shew'd any Approbation of it, his concealing it was as much Treason as the speaking it; and that all were Principals in Treason.

Page 967.
The Prisoners
are convicted

Mr. Solicitor sum'd up the Evidence for the King; and the Lord Chief-Justice having directed the Jury, they withdrew, and within an Hour brought in their Verdict, that *Tonge*, *Philips*, *Stubbs*, *Sellers*, and *Gibbs*, were Guilty, who being set to the Bar, with *Hind*, who confess'd the Fact, and would not abide his Tryal; it was demanded of them severally what they

they had to say, why Judgment of Death should not pass upon them.

Tonge answer'd, he crav'd the King's Mercy.

Philips also pray'd Mercy of the King, and of the Bench.

Page 968.

Strubbs also beg'd for Mercy, and said he was drawn in.

Sellers said he never deliver'd any Arms as had been testified, and desir'd Mercy.

Gibbs said he was innocent of any Design-against the King, and beg'd for Mercy.

Hind answer'd he had nothing to say, but beg'd the King's Mercy.

The Chief-Justice having made a short Speech to the Prisoners, exhorting them to discover who were the principal Authors of this Design, proceeded to pronounce Sentence on them as Traitors.

Sentence pass'd upon the Prisoners as Traitors.

The Tryals of JOHN TWYN, Printer, for High-Treason; and of THOMAS BREWSTER, Bookseller; SIMON DOVER, Printer, and NATHAN BROOKS, Bookbinder, for Misdemeanor, the 20th and 22d of February, 15 Car. II. 1663.

Page 968.

THE Indictment against John Twyn sets forth,
 " That the said John Twyn, as a false Traitor,
 " not weighing the Duty of his Allegiance, &c.
 " on the 27th of October, in the fifteenth Year of
 " the King, in the Parish of St. Bartholomew's, in
 " the Ward of Farringdon without, London, did com-
 " pass and imagine the Death of the King, the Sub-
 " version of the Government, &c. And that in or-
 " der to effect the same, he did, at the Time and
 " Place aforesaid, maliciously and traiterously im-
 " print and publish a certain seditious and scanda-
 " lous Book, intituled, *A Treatise of the Execution*
 " *of Justice, &c. against the Duty of his Allegiance,*
 " *the King's Peace, &c.*"

Page 969.
 The Indictment against Twyn for printing and publishing a treasonable Libel.

The Court offer
the Prisoner
Process to bring
in his Witnesses.

To which Indictment *John Twyn* pleaded Not Guilty, and desir'd Council ; the Court acquainted him that could not be granted ; but said, the Bench would be of Council for him ; and if he would name his Witnesses, they would take care to bring them in.

Page 90.
The Indictment
against *Dover*
for a seditious
Libel, call'd *The*
Speeches and
Prayers of the
late King's
Judges.

Then *Simon Dover* was arraign'd. The Indictment against him set forth, " That on the 15th of February, in the 13th Year of the King, the said *Simon Dover*, at the Parish of *St. Leonard's Foster-Lane*, in the Ward of *Aldersgate*, London, did maliciously imprint a certain false, seditious and scandalous Book, intituled, *The Speeches and Prayers of the late King's Judges*, and the same did sell and utter against the Duty of his Allegiance, &c.

Council, and a
Copy of the In-
dictment al-
low'd *Dover*, he
being charg'd
but with Misde-
meanor.

To this Indictment *Simon Dover* pleaded Not Guilty, and desir'd he might have Council, and a Copy of his Indictment ; which the Court told him he might have, the Crime he was charg'd with not being Capital.

Brewster ar-
raign'd for
printing the
Speeches.

Thomas Brewster was likewise arraign'd upon an Indictment for printing the aforesaid Speeches and Prayers of the late King's Judges.

To which Indictment he pleaded Not Guilty, and the Court told him he might have a Copy of the Indictment and Council.

Brewster ar-
raign'd for
printing the
Phoenix.

Thomas Brewster was also arraign'd upon a second Indictment for imprinting a seditious Book, call'd *The Phoenix*, or, *the Solemn League and Covenant*.

To which second Indictment he also pleaded Not Guilty.

Page 91.
Brooks arraign'd
for selling the
Speeches.

Nathan Brooks was arraign'd upon an Indictment for selling and publishing the aforesaid Libel, call'd *The Speeches and Prayers of the late King's Judges*.

To which Indictment *Nathan Brooks* pleaded Not Guilty.

One Jury
charg'd with all
the Prisoners.

Then a Jury was sworn, and charg'd with all the four Prisoners ; but *John Twyn* was first brought upon his Tryal.

Mr. North

Mr. North open'd the Indictment against Twyn, and Mr. Serjeant Morton open'd the Evidence, and observ'd that this Libel was design'd to be publish'd in October last, to prepare the People for that general Insurrection that was then intended.

Page 972.
Twyn's Trial
compos on.

Joseph Walker sworn.

He depos'd, That he compos'd [or set the Press] for the four first Pages of the Book, intituled, *A Treatise of the Execution of Justice*; and that his Master Twyn, the Prisoner at the Bar, deliver'd him the Copy to compose.

Mr. Recorder. Did not your Master compose the Title?

Walker. No, I did, and some part of the second, third, and fourth Sheets, but I can't particularize which Parts.

L. C. J. Hyde. Who compos'd the other Part?

Walker. I think my Master did.

L. C. J. Hyde. Who perus'd them when they were done, to see if they were right?

Walker. I carry'd them into the Kitchen, and laid them down by my Master, and afterwards my Master brought them into the Workhouse again, about an Hour, or Hour and half after.

L. C. J. Hyde. Was there any Body in the House that might correct it?

Walker. There was no Body in the House but my Fellow-'Prentice, and the Woman that keeps the House.

Serj. Morton. Did your Master work at the Press about this Work?

Page 973.

Walker. Yes, I saw him beat some Sheets.

L. C. J. Hyde. Were not the Amendments that were made like your Master's Hand?

Walker. The Letters were something like his, but I can't swear positively they were his.

Mr. Recorder. Did any Body correct Books in your House but your Master?

Walker. No, Sir.

Serj. Morton. Was this printed by Night or by Day?

Walker. We work'd in the Morning from two till four or five.

Serj.

Serj. Morton. What were you at Work upon when Mr. *L'Estrange* came to your House?

Walker. Upon the Signature D; the Sheet D of this Treatise.

Serj. Morton. What did your Master say when you told him Mr. *L'Estrange* was below?

Walker. I look'd through the Window, and saw People: I imagin'd Mr. *L'Estrange* was there, and I told my Master, and he said he was undone, or to that Effect.

Mr. Recorder. How long had you been at Work upon it?

Walker. About three or four Days.

Mr. Recorder. Did not your Master work in that time?

Walker. Yes, he was in the Workhouse, and set the Letters, and printed.

Serj. Morton. Did not you break the Form by your Master's Direction, when Mr. *L'Estrange* came?

Walker. I broke one indeed.

Serj. Morton. Did you not ask your Master who deliver'd him the Copy to print?

Walker. Yes, but he said it was no Matter to me.

Mr. *L'Estrange* sworn.

Page 974.

He depos'd, That three or four Days before the 12th of *October* last he had Notice of a Press that had been at Work several Nights in *Cloth-Fair*; and he took a Printer and a Conitable with him, and went to *Twyn's* House, where he heard them at Work; that he knock'd a Quarter of an Hour, and was about sending for a Smith before they would let him in, and they put out their Lights before they open'd the Door: That he got a Candle and went up Stairs, and there he found a Form broken (*i. e.* the Letters dispers'd,) only one Corner standing entire, which the Printer he carry'd with him compar'd with the Corner of a Page newly printed, and they appear'd to be the same; and at last they found the whole Impression thrown down a Pair of back Stairs: That the Deponent ask'd *Twyn* where he had the Copy, and *Twyn* told him at last he had it from *Calvert's* Maid. That the Deponent ask'd *Twyn* who corrected it, and what he thought

of

of it; and Twyn answered, that he had no Body but himself; he read it over and thought it was *mettle some Stuff*; That the Man was a hot, fiery Man that wrote it, but he knew no Hurt in it.

Serj. Morton. When you took these Sheets, were they wet?

L'Estrange. They were not only wet, but half of them imperfect: I told Twyn if he would produce the Copy (the Manuscript) it might be a Means to find Mercy, and afterwards his Servant brought me this Sheet [shewing a Sheet] I ask'd him how he disposed of the Sheets he had printed, and he said he delivered them to Mrs. Calvert's Maid at the Rose in Smithfield. I was long in searching Twyn's House, and one of his Apprentices escap'd, and I suppose gave Mrs. Calvert Notice of it, for I went thither, and she and the Maid were fled, but the Mistress is now in Custody.

Serj. Morton. What did Twyn confess before Sir H. Bennet?

L'Estrange. He said he printed the Sheet I shew'd here, and two others of the same Treatise; and he said Calvert's Maid paid him forty Shillings in part for that Work.

Mr. Dickenson sworn.

He depos'd, That he attended Mr. L'Estrange to the Prisoner's House the seventh of October about five in the Morning, and it was half an Hour before they were let in: That the Deponent questioning the Prisoner how he dare print such a Thing, he said *he thought the Author was an angry, smart Fellow; and that it was good mettle some Stuff.*

Page 975.

Thomas Mabb sworn.

He depos'd he was with Mr. L'Estrange when he search'd the Prisoner's House, and they found the Press had been lately at Work; there was at each Press a Sheet laid, and he took them off of the Tin-pin; they were just laid upon the Points, printed on one side: And they found two Forms broken all but one Piece, which they compar'd with one of the Sheets, and found them agree.

Twyn.

Twyn. What were the Words that you read ?

Mabb. The Words were *Execution and Judgment*, and *Lord have* ; and we found they had thrown the Sheets down the Back-stairs ; and upon asking the Prisoner what Number there were, he acknowledg'd there were a Thousand : And I heard him say at the Constable's House, that it was mettlesome Stuff, and that no Body corrected it but himself : And when I ask'd him why he would offer to do this, he seem'd to be sorry, and said it was his hard Fortune to meddle with it.

John Wickham sworn.

He depos'd, That he was a King's Messenger, and went with Mr. *L'Estrange* the seventh of *October* to search the Prisoner's House, and that there were two or three hundred Sheets thrown into the next House ; and the Deponent went and look'd upon them, and they were wet, newly come off the Press. That he had the Prisoner afterwards in Custody at his House, and the Prisoner own'd it was a very bitter thing, and said it was his unhappy Fortune to meet with it.

William Story sworn.

He depos'd, That he also was with Mr. *L'Estrange* searching the Prisoner's House the seventh of *October*, and he ask'd the Prisoner if he did not know it was Treason when he read it ; and the Prisoner answer'd, *It was a fiery thing ; I did not mind it much, but I should have got Money by it.*

Page 976.

Mr. Joseph Williamson sworn.

He depos'd, That he took *Twyn's* Examination, and that he acknowledg'd that the Copy was brought him by one *Evans*, Mrs. *Calvert's* Maid : That he had seen three Sheets of Copy, but had printed only two ; (a thousand Sheets of each ;) and that he deliver'd them to *Evans* at the *Rose* in *Smithfield*. The Prisoner also own'd he corrected those Sheets he had printed himself, and he receiv'd forty Shillings in part from the Maid when he deliver'd them at the *Rose*.

Here

Here the Title-Page of the Book was read, viz.

A Treatise of the Execution of Justice ; wherein is clearly prov'd that the Execution of Justice and Judgment is as well the Peoples as the Magistrates Duty ; and if the Magistrates pervert Judgment, the People are bound by the Law of God to execute Judgment without them, and upon them.

The Title Page
of the Libel
Twyn printed.

[The Court did not think the other particular Passages laid in the Indictment fit to be publish'd, and therefore they were not inserted in the printed Tryal.]

L. C. J. *Hyde*. Now what have you to say for your self? Here is as much Villany and Slander as is possible for the Devil or Man to invent: It is to destroy the King in his Person, to rob him of the Affections of his People, to destroy the whole Family, and all Government Ecclesiastical and Civil.

The Prisoner said in his Defence, that he neither read the Libel, or heard it read, till Mr. *L'E- strange* came; nor did he set his Men at Work upon it; nor did he know the Author, or whence it came.

Page 977.
Twyn denies he
knew what was
in the Libel.

Then the Chief-Justice directed the Jury, and told them there was no Doubt but the publishing such a Book was as High-Treason as could be committed: That it was as much a compassing and endeavouring the King's Death as could possibly be; and that the Prisoner's Defence consisted only in a bare Denial.

Publishing a
treasonable
Libel Evi-
dence of com-
passing the
King's Death.

Then the Jury withdrew, and after half an Hour's Recess brought in the Prisoner, *John Twyn*, Guilty, and Sentence was pronounc'd upon him as a Traitor.

Twyn convicted,
and Sentence
pass'd on him
as a Traitor.
Page 978.

The Jury were discharg'd of the other three Prisoners, and the Court adjourn'd till Monday the 22d of February.

The Jury dis-
charg'd of the
other Prisoners.

Monday,

Brewster's Tryal
by the same
Jury.

Monday, February 22. Thomas Brewster was brought upon his Tryal, and the Jury were charg'd with him again; and Mr. North having open'd the Indictment,

Thomas Creek was sworn.

He depos'd, That Mr. Brewster, Mr. Calvert, and Mr. Chapman came to him at the Cock in Little-Britain, and they deliver'd him part of the Copy of the *Speeches of the King's Judges* that suffer'd, and they desir'd the Deponent to print it, and that he printed as far as folio 36; and they directed him to print it with as much Privacy and Expedition as he could: That as he remembred the first Impression was 3000; and he printed part of a second Impression; and he deliver'd the Sheets to such Bookbinders as they directed him.

Page 979.

L. C. J. *Hyde*. Do you know who began where you left off?

Creek. I can't be positive, but I believe *Dover*; for I met him at the time they were printing, and talked with him about it.

George Thresher sworn.

He depos'd, That Mr. Brewster came to his House to enquire if he could fold and stitch the Books call'd *The Speeches*, &c. in blue Paper; and that the Deponent went to several Printers, particularly to Mr. *Dover's* for the Sheets; and that he made up about five hundred Books, and part of them he delivered to *Brooks*, and part of them to Brewster who paid him for them.

Thomas Loft sworn.

He depos'd, That there were about a thousand of these Libels folded and stitch'd at his Master's Mr. *Perry's*, and he believ'd it was by Mr. Brewster's Order, for he saw him at his Master's at that time, and Brewster's Apprentice fetch'd them away.

Peter Bodvile sworn.

He depos'd, That he was Servant to Brewster, and about three Years since he fetch'd several Bundles

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Bundles of the Books, call'd *The Speeches of the King's Judges, &c.* from *Creek's*; and that they were sold afterwards in his Master's Shop.

L. C. J. Did not your Master direct you to use some Privacy in selling them? Page 980.

Bodvile. I think he did; we had some Direction to that End.

Here part of the Words laid in the Indictment were read, particularly *Cook's Letter to a Friend*, fol. 40. viz.,

And so I descend to the Cause for which I am in Bonds, which is as good as ever it was; and I believe there is not a Saint that hath engag'd with us, but will wish at the last Day that he had seal'd to the Truth of it with his Blood, if thereupon call'd for. I am satisfied it is the most noble and glorious Cause that has been agitated since the Apostolical Times, being for Truth, Holiness, and Righteousness, for our Liberties as Men and as Christians, for removing all Yokes and Oppressions. And for, 41. It is such a Cause that the Martyrs would again come from Heaven to suffer for it if they might; I look upon it as the most high Act of Justice that our Story can parallel, &c.

Part of the Words laid in *Brewster's Indictment.*

Brewster observ'd from the Evidence, that it did not appear that he gave Directions for printing any more of the Libel than to the 36th Page; and tho' the Witness said he caus'd that Part to be printed, he did not say he did it maliciously, or with a Design against the Government; and that it was not usual for Booksellers to read what they sell; that selling Books was his Trade; and it was only the bare exercising of his Trade, he knew no Evil in it; and it came out in a time too when there were no Licensers, or appointed Rules, so that whatever was done he was not accountable for it; and he could bring Evidence that he was no seditious Person; that it was above three Years since the Book was printed; and that it was not sold privately, but went commonly about the Streets.

Brewster's Defence.

Page 981.

Then Mr. Serjeant *Morton* sum'd up the Evidence for the King, and the Lord Chief-Justice

Hyde

Malice always
implied where
the Fact is un-
lawful.

Page 982.

One may be in-
dicted for libel-
ing a private
Person.

No Excuse to
say the Libel
was a dying
Speech, or the
Words of a
dying Man.

Hyde directed the Jury. He told them, that where-
as the Defendant insisted there was no Proof of
any Malice, Malice was implied, as where one
speaks Words to defame a Person in his Trade, the
Action is always laid that he did it maliciously,
the Law implies so much where the Act itself is
unlawful; and if Malice was suppos'd where a
private Person was slander'd, much more where
the King and State were traduc'd: And as to his
doing it seditiously and factiously; what could
tend more to Sedition, and to incite and encourage
the People to the killing of Kings, than the pub-
lishing these vile Expressions of a Wretch who
had murder'd his Prince, viz. *That he joyc'd in his
Bonds; and that the Martyrs would willingly come from
Heaven to suffer in such a Cause; and that all the Saints
that engag'd in it would wish they had seal'd it with their
Blood?* That the Defendant had dispos'd of one
Impression of 3000, and had another Impression
afterwards; and what was the drift of the Libel,
but to instil into the King's Subjects, that the hor-
rid Murder of his Father was justifiable? and the
Chief-Justice said, he would be bold to affirm, *that
so horrid a Villany had not been done upon the Face of
the Earth since the crucifying of our Saviour;* and that
he must not think to justify all manner of Sedition
and Wickedness against the King and State, by
saying that selling Books was his Trade; that it
was justifiable indeed for a Council to plead for his
Client, but if he would utter Sedition, under a
Pretence of defending his Client, he would be
punishable for it; and if a Printer will print sedi-
tious and factious Books, he must look to himself.
That writing Letters was lawful, but if a Man
would write treasonable Letters he was punishable
for it: That if a Printer should compile a Libel
against a private Man, not in Authority, he might
be indicted and punish'd for it; and so he might who
prints a Libel against a Magistrate; much more one
who does it against the King and State: Nor could
the Defendant excuse himself by saying they were
dying Speeches or the Words of *dying Men*; for if a Man
would be as wicked at his Death as he had been in
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his Life, and justify his Villany, he who publishes it is punishable. As where a Highway-man shall at the Gallows arraign the Justice of the Law, and of the Judges who condemn'd him; he who publishes this shall not go unpunish'd. That if the Defendant had caus'd these Speeches to be printed or publish'd, they must find him *Guilty* of the Misdemeanor whereof he stood indicted; and he had great Indulgence that he was not proceeded against capitally.

Then the Jury were charg'd with *Brewster*, upon the second Indictment, for printing the Libel call'd *The Phoenix*: or, *The Solemn League and Covenant*; and Mr. North having open'd the Indictment, Mr. Serjeant Morton open'd the Evidence; after which,

Brewster's Trial on the second Indictment, for publishing The Phoenix.

Mr. Creek was sworn again.

He depos'd, That *Chapman, Calvert* and the Defendant *Brewster* came to him in May was three Years, and brought the *Phoenix* to him to print; and that he printed 2000 of them, and deliver'd the Defendant *Brewster* his Share of them, being 600 and odd, for which *Brewster* paid him.

Mr. Just. *Kelynge*. Did he direct you to do it with Privacy?

Creek. Yes, with Expedition and Privacy.

Brewster. Was the Copy written or printed?

Creek. It was all printed formerly, and might have been bought in any Place almost; it was in several Books, part of it was Mr. *Calamy's* Sermon, and part Mr. *Douglas's* Sermon, &c.

Brewster. Did I order you how you should print them, or *Calvert*? Did not you hear *Calvert* say he had staid for me two Hours at an Ale-house?

Creek. They waited two Hours for him to be their Partner.

Page 993.

Thresher sworn.

He depos'd, That he had two or three hundred of the Libels call'd *The Phoenix* from *Brewster* to fold and stitch; and that *Brewster* gave him a Note to deliver two Dozen of them to such and such particular Booksellers.

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X Y

Peter

Peter Bodvile sworn.

He depos'd, That he sold some of the Books call'd *The Phoenix* in his Master Mr. Brewster's Shop; that they were laid up privately in a Hole in the Wall in a Room over the Shop, and from thence he fetch'd them that he sold.

Brewster's Defence.

Mr. Brewster said in his Defence, that these things had been printed before with Licence; and that there was no publick Licenser at this time; and that they did but put together what had been before printed separately; and he call'd some Witnesses to his Reputation, who depos'd, that the Defendant went to Church, did his Duty in the Train'd-bands, and was a very civil Person.

Page 924.
Part of the Words laid in Brewster's second Indictment.

Then part of the Libel was read, viz. *The Phoenix: or, The Solemn League and Covenant [Edinburgh printed in the Year of Covenant breaking] A King abusing his Power to the Overthrow of Religion, Laws and Liberties, which are the very Fundamentals of this Contract and Covenant, may be controul'd and oppos'd; and if he set himself to overthrow all these by Arms, then they who have Power, as the Estates of a Land, may and ought to resist by Arms; because he doth by that Opposition break the very Bonds, and overthrow the Essentials of this Contract and Covenant; this may serve to justify the Proceedings of this Kingdom against the late King, who in an hostile way set himself to overthrow Religion, Parliaments, Laws and Liberties. And Page 158. That the Breach of the Covenant was a greater Sin than the Breach of a Commandment, &c.*

The asserting the Doctrine of Resistance Treason.

The Chief Justice told the Judges, that the asserting the People might resist their Prince, and take up Arms against him, was direct Treason; and the Government had been very merciful they had not indicted him of Treason: And as for its being licens'd, it appear'd part of it was licens'd at Edinburgh, and part of it here, during the Rebellion; and to tell the People, now the King was happily return'd, that they might do the same thing again, was no less than Treason; and he thought the Indictment fully prov'd.

Simon

Simon Dover was next brought upon his Tryal; *Dover's Tryal.*
and *Mr. North* having open'd the Indictment,

Creek was sworn again.

He depos'd, That to the best of his Remembrance, *Dover* did print part of the Book, call'd *The Dying Speeches, &c.*

Mr. Just. Kelynge. Did you change Sheets with him?

Creek. I cannot say but some Sheets were chang'd by our Men.

Serj. Morton. Did not you talk about the Danger of printing it?

Creek. We talk'd of making an end of it.

Mr. Just. Kelynge. For a Printer or a Bookseller to print any thing one against another, is actionable. Do you think the Press is open to print what you like? if you had your due, you ought both of you to have been drawn, hang'd and quarter'd for this Book.

Page 985.

Thresher sworn.

He depos'd, That when *Mr. Brewster* sent for him to stitch these Books, he went that Night to *Mr. Dover's*, and had two or three hundred of the Sheets there, but he did not see *Dover* print any of them.

Dover. Did you ever see me before in your Life?

Thresher. I was never in your House but that Night; and when I came for the Sheets you ask'd *Mr. Brewster* whether he and *Mr. Calvert* were agreed, or else you would not deliver the Sheets.

Mr. L'Estrange sworn.

He depos'd, That the Defendant *Dover* was printing several dangerous things at that time; and the Court said, tho' this Evidence did not concern the Matter with which he was charg'd; yet it was proper Evidence to shew he was not a Man of so clear a Reputation as he pretended.

Page 986]

Dover said in his Defence, *First*, That there was *Dover's Defence.*
no Act or Law then in force concerning Printing; that the Witnesses did not swear positively that he did it; and the Title of the Book says faithfully
X 2 and

The TRYALS of

and impartially collected; so that it could not be interpreted to be done maliciously; that what he did was for a Livelihood, and the Scripture said he was worse than an Infidel who did not provide for his Family; that possibly he might have transgress'd through Ignorance, and if he had, he was sorry for it.

Brooks's Tryal.

Then the Chief-Justice directed the Jury, and observ'd he made much the same Defence as his Fellows; and tho' every Man ought to maintain his Family, yet he ought not to do it by abusing the King and Government; that was no part of his Trade; a Thief might, by the same Rule, say he stole to maintain his Wife and Children; and he told the Jury, tho' there was no direct Proof of his printing the Libel, yet there were pregnant, strong and undeniable *Circumstances* of his printing it, which was good Evidence — Then Nathan Brooks was brought upon his Tryal, being also indicted of a Misdemeanor, in dispersing and publishing the Libel call'd *Dying Speeches*, &c.

Thresher sworn again.

He depos'd, That he deliver'd about 200 of these Libels, call'd *Dying Speeches*, to the Defendant Brooks, by Mr. Brewster's Orders; and that Brooks took them of him, and paid him for stitching them in blue Paper; and that he afterwards came to the Deponent to an Ale-house, and gave him a Flagon of Beer, and he found fault that some of the Books were imperfect; and said Mr. Brewster must make them good; and Mr. Brewster gave Order if he came for the Sheets they should be deliver'd him.

Page 987.

Henry Martlock sworn.

He depos'd, That the Defendant Brooks brought him 40 or 50 of these Books; and that he paid him for them.

Mr. L'Estrange sworn.

He depos'd, That in October last he went to search the House of Nathan Brooks; and with some difficulty being let in, one of the Lodgers came down into the Kitchen, and threw down a Bundle of

of Books, wherein were *The Dying Speeches*; and said, *I'll not be hang'd for e'er a Rogue of you all; do you hide your Books in my Chamber?* That afterwards the Deponent went to search the next House; and seeing the second Floor in a Blaze, he endeavour'd to force open the Door; but the Fire was put out, and he was let it, and found about 200 of *The Prelatick Preachers*, and certain Notes of *Nathan Brooks*, wherein he mentions the Delivery of several of these *Speeches*, and other seditious Pamphlets; and there was one Memorandum, that *Thomas Brewster* did, in the Presence of Captain *Hanson*, undertake to bear the Charges of his Imprisonment (*Brooks* having been formerly imprison'd for a Fact wherein *Brewster* was to bear him out.)

L. C. J. Hyde. Had *Brooks* convey'd any Books to that House?

Mr. L'Estrange. The Man and his Wife, who lodg'd in the Chamber where the Fire was, said that *Brooks*, with his own Hands, deliver'd them that parcel of Books that was found there.

L. C. J. You hear what one of your Guests said, that he would not be hang'd for never a Rogue of you all, and threw down the Book.

Brooks. What's that to me, if a Man have a Book in his House, and throw it down and say so, does that concern me? He did not bring it out of my Chamber.

Mercer sworn.

He depos'd, That his Landlord *Brooks* desir'd him to lay up a Book for him in his Chamber, but the Deponent refus'd; afterwards, when *Mr. L'Estrange* was in the House, his Wife call'd to his Sister, and ask'd if *Mr. Brooks* was in the Room; and the Deponent's Sister answer'd *Yes*, and he had left a Book with her; whereupon the Deponent went up Stairs, and took the Book and brought it down presently.

Brooks. Is that the individual Book I brought up there?

L. C. J. He swears he went up and brought it down; and this appears to be the very individual Book.

Mercer's

Mercer's Wife sworn.

Page 982.

She depos'd, That she call'd to her Sister, and ask'd if Mr. *Brooks* was in the Chamber, and she answer'd *Yes*, and had left a Book there; and that thereupon she call'd her Husband up; and desir'd him to take the Book and carry it down to Mr. *L'Estrange*.

Thomazin Mercer sworn.

Being shewn the Book, she depos'd, That was the very Book she receiv'd of Mr. *Brooks*, there were the Speeches of the ten Men that were executed.

Merridale sworn.

He depos'd, That this was the Book that *Mercer* brought down, and said he would be bang'd for never a Rogue of them all; that he took notice of the Picture of Sir *Henry Vane* in it; and that *Brooks* own'd the Book.

Brooks's Defence.

Brooks said in his Defence, that he did not deny opening the Door to Mr. *L'Estrange*; that *Mercer* was a Lodger in his House, and behind-hand in his Rent; and he had often sent after him for his Rent, and therefore he spoke maliciously against him — That he was but a poor Bookbinder, and work'd at his Trade, and could not be suppos'd to be guilty of Sedition or Malice.

Then the Chief-Justice directed the Jury; and told them, the Defendant was not question'd for using, but abusing his Trade; that the Evidence went only to the publishing; and if they were satisfied he publish'd it, that was his Crime; that printing alone was not enough without publishing; for a Man might print a Book to make a Fire of; but that alone was no Offence; that it was the publishing that was the Crime.

Jury. We desire to know on what Statute Law this Indictment is grounded?

L. C. J. Hyde. Upon none; 'tis an Offence at Common-Law.

The Jury being withdrawn, after an Hour's Reflections, return'd with their Verdicts, viz. That
Brewster

Brewster was guilty of selling and uttering the Speeches.

That Brewster was also guilty of publishing The Phoenix.

That Dover was guilty of printing and publishing The Speeches, &c.

And that Nathaw Brooks was Guilty of selling The Speeches, &c.

Then the King's Council demanded Judgment against these three Defendants; and the Chief-Justice made a Speech to them, and told them it was the King's Mercy they were not all proceeded against Capitally: That at Common-Law, the printing or publishing any thing to reproach the King, the State or Government, or even a particular Person, was punishable as a Misdemeanor: That it was not the saying they knew not what was in the Libel, would avail them in Point of Law.

The Judgment against Brewster was, that he should pay a Fine of 100 Marks, and stand in the Pillory: Against Brooks and Dover, that they should either of them pay a Fine of 40 Marks, and be set in the Pillory two several Days; and be committed without Bail till the next Sessions, when they should all make an open Confession of their Offences, in such Words as should be directed; and afterwards remain Prisoners during the King's Pleasure; and when they were discharg'd, should enter into Recognizances of 400*l.* each, with two Sureties of 200*l.* each, not to print or publish any Books but what should be allow'd of.

Brewster convicted on both Indictments. Dover and Brooks convicted.

Page 989.
Judgment against Brewster, Dover, and Brooks, Fine, Pillory, and Imprisonment.

Page 989.

The Tryal of MARY MODERS, alias STEDMAN (call'd the German Princess) for Bigamy, at the Old-Bailey, the 4th of June, 15 Car. II, 1663.

The Indictment for Felony, in marrying a second Husband, the First being alive.

THE Prisoner was brought to the Old-Bailey and arraign'd the third of June 1663. She was indicted by the Name of *Mary Moders Spinster, alias Mary Stedman*, the Wife of *Thomas Stedman* Shoemaker — The Indictment set forth, " That the Prisoner, the 12th of May, in the sixth Year of the King, at the Parish of St. Mildred's in the City of Canterbury, did take to Husband *Thomas Stedman*; and that on the 21st of April, in the 15th Year of the King, at the Parish of Great St. Bartholomew's, in the Ward of Farringdon, London, she did feloniously take to Husband one *John Carleton*, the said *Thomas Stedman*, her former Husband, being in full Life, against the Form of the Statute, the King's Peace, &c.

Page 990.

To which Indictment she pleaded *Not Guilty*.

The fourth of June she was again brought to the Bar; and a Jury being charg'd with her, the Witnesses were call'd; and first,

James Knot was sworn.

Evidence of the first Marriage.

He depos'd, That about nine Years ago he gave the Prisoner in Marriage to *Thomas Stedman*, at the Parish of St. Mildred's in Canterbury; and that they were married by one Parson *Man*; that *Stedman* and his Wife liv'd together about four Years at Canterbury, and had two Children that died; and that he saw *Stedman* alive at Dover last Week.

Court. What Company was at the Wedding?

Knot. There were the married Couple, her Sister, myself, the Parson and Sexton.

Court. Did you know this Woman before the Marriage?

Knot.

Knot. Yes, I knew her a long time, I was an Apprentice seven Years near her Mother's House in *Canterbury*; I did not know her own Father, but her Father-in-Law was a Musician there.

Court. In what manner were they married; and what Words were us'd?

Knot. They were married according to the Order of the Land, a little before the Act touching Marriages by Justices of Peace.

Court. Was it by the Form in the Common-Prayer?

Knot. I did not take notice; I was but a young Man.

William Clerk sworn.

He depos'd, That he was last Week at *Dover* with the last Witness *Knot* and *Thomas Stedman*; and that *Stedman* own'd he married one *Mary Moders*, Daughter of one in *Canterbury*; and that *Knot* gave her; and that *Stedman* said he had two Children by her; and would have come up as an Evidence against her, but wanted Money for his Journey.

Carleton's Father sworn.

He depos'd, That he saw *Stedman* at *Dover* last Week; and he acknowledg'd he was the Prisoner's Husband; and that *Knot* gave her in Marriage.

Court. Where is this Man her Husband? we must not condemn a Person upon Hearsay.

Sarah Williams sworn.

Page 391.

She depos'd, That the Prisoner was bound for *Barbadoes*, on board her Husband's Ship; and that while the Ship lay in the Downs, *Thomas Stedman* her Husband came with an Order and fetch'd the Prisoner a shore.

Court. Have you any more to prove the first Marriage?

Carleton sen. No, there were but three there, and the Minister is dead, and the Sexton is not to be found; *Stedman* said, in my hearing, that they liv'd four Years together, had two Children and both dead; and that 'twas five Years ago last Easter since she left him.

The TRYAL of

Court. Did you search the Register for the first Marriage?

Carleton. I did look in the Book, but the Clerk said the Registers were neglected about that Time.

The Prisoner admits the second Marriage, but denies the First.

Then Witnesses were call'd to prove the second Marriage with young *Carleton*; but this the Prisoner acknowledg'd.

Court. *Knot*, how came you to give her in Marriage?

Knot. I was *Stedman's* Shop-mate, and he desir'd me to go along with him.

Court. What Age was she when she was married?

Knot. I suppose, about nineteen or twenty.

The Prisoner's Defence.

The Prisoner said in her Defence, that this Prosecution was contriv'd by her Husband *Carleton's* Father, because she refus'd to make over what she had to his Son; that she was a Foreigner, and Mr. *Carleton* understanding she was a Woman of Substance, by a Letter he intercepted, he never left soliciting her till she consented to marry him; and was so much in haste to secure her Fortune, that he married her first without a Licence, and a few Days after procur'd a Licence and married her again: That upon her refusing to comply with the Demands of the Father and Son, they had forg'd this Story of her being married to a Man at *Canterbury*; and that several of that Town had been brought to the Prison, in order to make them Witnesses against her, but none of them knew her; and it was strange that no Certificate or Register of such a Marriage should appear, if she had been married there; and no other Testimony of it, but the Evidence of this paltry Fellow *Knot*.

Page 192.

Court. You say, *Knot*, that she liv'd near you at *Canterbury*; is there no Man or Woman in that whole City, that can testify she liv'd there?

Knot. I believe I could fetch one.

Court. Are they to fetch still?

Elizabeth Collier was call'd as a Witness for the Prisoner.

She

She depos'd, That she went to see her Husband, who was a Prisoner in the *Gate-house*; and that one *Billing* came thither, and said he had a Wife there; and said the Deponent was his Wife; and afterwards he said she was not.

Jane Finch depos'd, That she was offer'd five Pounds to swear against the Prisoner *Mrs. Carleton*.

Baley, the Jaylor of the *Gate-house*, depos'd, That there had been 500 People to see the Prisoner; and several of them from *Canterbury*, but they all said they did not know her.

Prisoner. They say I was nineteen Years of Age nine Years ago, and I am but twenty-one yet.

Court. Why did not you get some Body else from *Canterbury* to testify in this Matter? *Knot* says she liv'd near him four Years a Wife.

Carleton. Here was one *Davis*, who said he was at her Father's House, and spoke with him; but I don't know where he is gone.

Then Mr. *J. Howel* directed the Jury, and told them, the Evidence of the first Marriage depended on the single Testimony of *Knot*, who did not say neither in what manner the Marriage was celebrated; and it was strange, if they liv'd together four Years, and had two Children, that no Body else was brought to prove this: And that if they should find her *Guilty*, she must die; for that a Woman could not have Clergy.

Page 993.
A Woman was
not entitled to
the Benefit of
Clergy.

The Jury being withdrawn for a little time, return'd with their Verdict that the Prisoner was *Not Guilty*, *Mary Moders* is acquitted.

She desir'd to have her Clothes and Jewels return'd her; but was told they were her Husband's,

The Tryals of Colonel JAMES TURNER, JOHN TURNER, WILLIAM TURNER, MARY TURNER, and ELY TURNER, for Felony and Burglary, at the Old-Bailey, the 15th, 16th, and 19th of January, 15 Car. 2. 1663.

The Indictment for breaking open the House of Mr. Francis Tryon, and robbing him of Jewels and Money to a very great Value.

Page 994.

THE Indictment set forth, " That the said
 " *James Turner, John Turner, and William*
 " *Turner, the 7th Day of January, in the 15th*
 " *Year of the King, about ten of the Clock of*
 " *the Night-time of the same Day, at the Pa-*
 " *rish of St. Dionis-Back-Church in the Ward of*
 " *Lincolns-Inn, London, the Dwelling-house of one*
 " *Francis Tryon, Merchant, did feloniously and burg-*
 " *larily break and enter, and on him the said Fran-*
 " *cis Tryon, then and there being and resting, felo-*
 " *niously and burglarily did make an Assault, and*
 " *him the said Francis Tryon in corporal Fear of his*
 " *Life feloniously and burglarily did put; and one*
 " *pendant Pearl set in Gold, and a precious Stone*
 " *fix'd thereunto, of the Value of 150 l. two o-*
 " *ther pendant Pearls, [and other Jewels of a very*
 " *considerable Value] and 1023 l. of Money, being*
 " *the Goods and Chattels of the said Francis Tryon,*
 " *did feloniously and burglarily steal, take, and*
 " *carry away: And that afterwards, the 8th Day*
 " *of January, in the 15th Year aforesaid, at the*
 " *Parish and Ward aforesaid, the said Mary Turner*
 " *and Ely Turner knowing the said John Turner to*
 " *have committed the said Felony and Burglary,*
 " *did receive, comfort and maintain him, against*
 " *the King's Peace, his Crown and Dignity, &c."*

To which Indictment the Prisoners severally pleaded *Not Guilty*.

The Prisoner *James Turner* complain'd to the Court that the Sheriff had taken Possession of his House and seiz'd his Goods.

The

The Sheriffs said they conceiv'd they had done nothing but what was Customary: That having heard the Prisoner was committed for Felony and Burglary, and none but Children being in the House, they thought it for his Good to secure his Estate in case he should be acquitted, and for the King's Benefit if he should be convicted, that so the Goods might not be imbezzled; and therefore they had caused an Inventory to be made, but they had dispos-
sels'd no body: They had indeed left a Servant or two in the House, but they had offer'd the Prisoner to leave the Goods with any Friend of his that would undertake they should be forth coming if he was convicted.

The Lord Chief Justice Hyde said, That the Goods of a Man accus'd of Felony were not forfeited till Conviction, and that the Prisoner ought to have them to live upon; but on the other Hand, it was but prudent and agreeable to Law to take Care the Goods be not imbezzled, because on a Conviction they were forfeited to the King, and therefore the Sheriffs had done no more than they ought to do: That the Goods were not taken away; he might have what he would for his present Supply, and if any one would give Security, they should be forth coming, they might have the keeping of them.

Then the Prisoner said, He had several Papers in his House that were necessary for his Defence, and desir'd he might be permitted to go and fetch them; but the Court said they could not give him Leave: He was in the Sheriff's Custody, who was answerable for him. — He desir'd then that one of his Sons might go, but was told they were indicted with him; but if the Sheriff would send one with them, he might. The Prisoner desir'd he might have the Process of the Court to bring in his Witnesses.

The Lord Chief Justice Hyde answer'd, They could grant no Precept to bring them in: The Court could not compel them to come in.

Then he desir'd that the Prosecutor himself might be in Court; but the Lord Chief Justice said

A Prisoner ought to be substituted out of his Goods till he is convicted.

Page 995. But they may be secur'd to attend the Event of the Tryal.

The Court tell the Prisoner they could not grant him Process to bring in his Witnesses.

said they could not compel him, if he would forfeit his Recognizance. After which the Prisoners were remanded to Prison.

The Tryal begins.

The 16th of January, 1663, the Prisoners were again brought to the Bar, and a Jury were sworn and charg'd with them, and the King's Witnessees were call'd; and first,

Sir Thomas Aleyn was sworn :

Page 996.

Sir Tho. Aleyn's Evidence of his taking Colonel Turner's Examination.

He depos'd, That having heard of this Robbery on Friday Se'night in the Morning, he went to visit Mr. Tryon in the Afternoon; and he was desir'd to examine the Business: And first he examin'd Mr. Tryon's Man and Maid, who confess'd they had sup'd abroad at a Dancing-School, and hearing one Mr. Tryon was rob'd, they hasten'd home: That he demanded whether they us'd to go abroad after their Master was a Bed; and the Man said he had been twenty or thirty times at Colonel Turner's (the Prisoner's) at Supper about a Year since; (but tho' this prov'd to be false) this was the first Occasion of their suspecting Colonel Turner: That the Deponent then proceeded to examine the Colonel, who not denying it, as a Person of his Spirit might be presum'd to do, confirm'd the Deponent's Suspicion: Then the Deponent directed his House to be search'd, but they could find nothing there. - - -

Page 997.

That the next Morning Alderman Love came to the Deponent and inform'd him, if he would go into the Minories he might discover who rob'd Mr. Tryon, and that Mr. Turner had remov'd several hundred Pounds that Morning, and that Mr. Love told him he would meet a Maid-Servant of his at such a Corner, who would shew him the Way to the Place, and he did so; and at the further End of the Minories he went into a Shop, and found Colonel Turner with his Hand in a Chest, and there were two Wallets there, one of 100 l. and the other of 200 l. and in a Chest in the Kitchen the Deponent found two Wallets more, whereupon the Colonel was speechless. - - -

That afterwards the Deponent examin'd the Colonel where he had this Money; he answer'd, It was remov'd by himself, his Wife and Children that Morning, that he remov'd it till this Foolery was

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over, and the Colonel said he receiv'd it of a Goldsmith about 14 Days before, whose Name he had forgot: That the Colonel desir'd he might go to Mr. Tryon's, and they took Coach and carried him and the Money to Mr. Tryon's House, and the Colonel said Mr. Tryon should have all the rest of his Money and Jewels again by three a-clock that Afternoon, whereupon they let him go; but the Deponent coming to Mr. Tryon's again about four in the Afternoon, understood that the Colonel was arrested; whereupon the Deponent sent for the Serjeant and the Colonel, who, when he came, said he had brought all the Things if the Officers had not prevented him, and press'd very hard for an Hour or two, and said, if he did not go, Mr. Tryon would lose the rest of his Money and Jewels: Then he beg'd he might go but to the *Hoop* Tavern and send for his Wife, which being granted, he sent his Wife for the Jewels, and the Deponent directed the Officers to secure her when she return'd: About eleven a-clock his Wife came, and then the Colonel desir'd to speak with Mr. Tryon in private; and afterwards told the Deponent that Mr. Tryon's Soul was pawn'd to him, and his to the Thief's that no Discovery should be made: That when the Deponent examin'd his Wife, she denied that any Money went from their House that Morning; and being examin'd where she had the Jewels, she said she knew of none; but she had a couple of Bags that she was sent for: Near *White-chappel* or the *Tower* she said she was told a Person should meet her, and ask what she did there, and she was to answer she walk'd up and down for something that should be given her; and one brought her the two Bags, which she deliver'd to her Husband; but what was in them she knew not: The Colonel said he had perform'd his Part, and he hop'd Mr. Tryon would perform his: That they run over the Jewels, and there were all except one Carcanet of Diamonds and Jewels, valued at 100 *l.* and one Cat's-head Eye-ring she had upon her Finger, but that was deliver'd: The Colonel said the Carcanet should be forth coming too, (it was fallen down behind a Chest) and he would give

Mr. Try-

Mr. Tryon his Bond to pay him the remaining 600*l.* in six Months; and press'd that there might be no Prosecution, for two Souls he said again were pawn'd for it, and desir'd an End of the Business: But they told him the Examination had been publick, it was not in Mr. Tryon's Power to end the Matter with him, but that he and his Wife must be sent to *Newgate*; whereupon the Colonel answer'd, *How say you Mr. Alderman! then I had better have kept the Jewels.*

Lord Chief Justice *Bridgman*: Then on *Thursday* the Robbery was committed, on *Friday* he was examin'd, *Saturday* the Money was remov'd, and that Night the Jewels were brought, and he was committed.

Sir *Thomas Alyn*: I have this further to add, that before he went to the *Hoop* Tavern, he confess'd it was Mr. Tryon's Money that he remov'd: And when I bid them secure his Son at the *Minories*, he run out at a Back-door, and leap'd over a Ditch, and could not be heard of till Yesterday, tho' I sent out Warrants against him.

Mr. Tryon sworn:

He depos'd that on *Thursday* Night was Se'night, about eleven a Clock, two Men came to his Bed-side, and one of them who had a Lanthorn wak'd him, and asking them who they were, and what their Business was, they made no Answer, but bound and gag'd him, and us'd him very barbarously: That his Servants it seems were out at Supper that Night, so when he had lain in this Condition about an Hour, he roll'd himself off the Bed, and fell upon the Chamber-pot, which broke and hurt him; however, he made a Shift to get to the Window, and cry'd out Murder, Thieves, &c. and his Neighbours came in and unbound him: That he then went down to his Ware-house, and found the Jewels and Money gone, and observ'd it must be somebody that was privy where he laid his Jewels, as the Prisoner *James Turner* was, and said that *Turner* us'd to frequent his House, and they were very familiar.

Mr. Try-

Mr. Tryon's
Evidence of his
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Mr. Tryon's Man Hill sworn :

He depos'd, That when he went out that Night he left the Door double-lock'd, and the Jewels were safe then, and that when he return'd all the best Jewels were gone : That he was saying to the Prisoner that *Saturday* he was in Custody, that if he and the Maid had been at home, he suppos'd they should have been kill'd ; and the Colonel answer'd, They would only have bound you and the Maid. And asking him further, how it was possible they could get in ; the Colonel told him, One went thro' the Entry in the Day-time, and lay there till Night, and then let others in : And upon asking how he came to know it, The Colonel said he examin'd them.

Hill depos'd further, That about a Year before Colonel *Turner* would have had him got a Will forg'd for old Mr. *Tryon*, (he having no Children) and made himself and two more Executors.

Page 1000.

Lord Chief Justice *Hyde*. Did not you go to Mr. *Turner's* that Night the Robbery was ?

Hill. No : The Maid and I went to Mr. *Starkey's*, and hearing there was such a Robbery, I run home in a great Fright, and found the Doors open, and the Neighbours within.

Turner said, As to the Business of getting Mr. *Grainger* to forge Mr. *Tryon's* Will, it was spoken only in jest ; but *Hill* affirm'd the contrary.

Elizabeth Fry sworn :

She depos'd, That about six last *Saturday* Morning Mrs. *Turner* came to her House and call'd her up, and told her that a Friend of hers, a Merchant, was lately broke, and he had a Wife and seven Children, and they desir'd to secure their Money till they had taken their Oaths the Money was not in the House, and that her Husband and her Son *Ely* were coming with the Money, and ask'd the Deponent if she had a spare Chest : That *Turner*, the Husband, came in and ask'd his Wife concerning the Seals, and she said, the Gentlewoman who own'd the Money had desir'd her to pull them off : And they offer'd the Deponent twenty Shillings for her

Fry's Evidence
of *Turner's*
bringing the
Money to her
House.

The TRYALS of

Kindness, and said the Gentlewoman impower'd them to give it, and bid the Deponent conceal it, because the Discovery would ruin the Gentlewoman and her Children, and if any one question'd her about it, she should say they desir'd her to let some Linen lie there.

Lord Chief Justice *Hyde*: When the Money was brought, was there any Discourse of eleven hundred Pounds?

Fry: To the best of my Remembrance it was so. There were five Wallets brought into my House; three were put into a Chest in the Shop, and two in the Kitchen.

Mr. *Gurnet* sworn:

He depos'd, That he met with Colonel *Turner* the *Saturday* after the Robbery, and he said he did not doubt to make a Discovery of the Thieves and clear himself, and that he had already met with the Jewels and 500 *l.* of the Money, and the rest he should have by three a-clock in the Afternoon; and on the Deponent's asking who the Thieves were, he said they were Friends; but that two of them being Strangers, went beyond their Commission in using Mr. *Tryon* so barbarously as they did.

Page 1001.

Major *Ralph Tasker* sworn:

He depos'd, That on *Saturday* Morning Sir *Thomas Aleyn* met him and took him into the *Minories* with him, and two Maids show'd them the House where Colonel *Turner* was, and they found him with his Hand in a Chest, and there were two Buckram Bags of about 200 *l.* each, and another in the Kitchen: That one whom they said was Colonel *Turner's* Son fled out of the House, and that Sir *Thomas Aleyn* pressing Colonel *Turner* to know whose Money it was, the Colonel swore by the Eternal God it was his own: And that they sent for a Constable, and took Coach and carry'd the Money and the Colonel to Mr. *Tryon's*, and that the Colonel and Mr. *Tryon* having had some Discourse in private, the Colonel came out and said the old Gentleman and I am agreed, I will trust the Money no longer

longer with you, but with the old Gentleman himself.

Lord Chief Justice *Bridgman* : Did you see the Bags out of the Wallets ?

Sir *Thomas Aleyn* : We saw one which was seal'd I think with the Bishop of *Chichester's* Seal.

Anne Ball sworn :

She depos'd that she was in Bed when Mr. *Turner* and his Wife brought the Money to *Fry's* House : That she saw *Turner* and his Wife come in, and when she understood they had brought Money, she told Mrs. *Fry* they should be undone if they kept it in the House, and that thereupon *Fry* went and acquainted her Sister, and so it came to Sir *Thomas Aleyn's* Ears.

Frederick Ixam sworn :

He depos'd, That he was at Mr. *Tryon's* on the *Saturday* Night, and saw the Bags of Money taken out of the several Wallets, and one of them had a Seal, which was said to be like the Bishop of *Chichester's*, and they compar'd it with the Seal of a Letter which Mr. *Tryon* had receiv'd from the Bishop, and found them agree.

The Bags of Money seal'd with the Bishop of *Chichester's* Seal.

Hanson the Goldsmith sworn :

The Bishop of *Chichester's* Letter and the Seal on the Bag being shewn this Witness in Court, he depos'd that the Seals did agree ; and they were also shewn to the Jury.

Cole, the Serjeant, sworn :

He depos'd, That on *Saturday* in the Afternoon he arrested Colonel *Turner* in an Action of 700 l. at the Suit of *Thomas Lyon* and others that were Bail for him ; and having him at the *Hoop Tavern*, the Constable came and charg'd them to assist him to have Colonel *Turner* before Sir *Thomas Aleyn*, and that discoursing afterwards how Mr. *Tryon's* House could be rob'd, and none of his Doors broke ; Colonel *Turner* said he had taken a Man in the *Minories* who had discover'd how it was : That one

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went

The TRYALS of

went down into the Cellar in the Day-time, and lay there till the old Gentleman was in Bed, and then took the Key from his Bed-side, and let in the rest: And Mr. Tryon's Servant saying, He suppos'd if the Maid and he had been at home they should have been kill'd, the Colonel said no, you would only have been bound.

Lord Chief Justice *Hyde*: Did he say nothing of Mr. Tryon's Tooth?

Cole: He said, that the Fellow putting his Finger in his Mouth to gag him, the old Gentleman bit him; and struggling to get out his Finger, he pull'd out a Tooth.

Lord Chief Justice *Bridgman*: What do you know Mr. Hill about breaking your own Desk?

Hill: My Desk was lock'd, and the Key in my Pocket, and I lost out of it about 45 l. of my own Money: It stood upon a Table in the Ware-house, and the Jewels were in a Drawer under a Table in the Counting-house.

Lord Chief Justice *Bridgman*: How did you leave Mr. Tryon's Door?

Hill. Double-lock'd, and I had the Key in my Pocket, and my Master had another Key in his Chamber.

L. Ch. Just. *Bridgman*. Mr. Tryon, how was your Door opened?

Mr. Tryon. They forc'd open the Street-Door with a Crow of Iron, and I never lock my Chamber-Door.

L. Ch. Just. *Hyde*. Were your Counting-House and Till, where the Jewels lay, lock'd?

Mr. Tryon. Yes; and the Till was open'd, I know not how; my Key was among a Bunch of Keys.

Peter Vanden Anchor sworn.

He depos'd, That being just come home, his Daughter said, she heard a great Cry of Murder, and he ran out, and found some of the Neighbours breaking open Mr. Tryon's Door, and he first got into the House, and ran up to Mr. Tryon's Chamber, and found him bound with a Rope.

C^d.

Chaplain sworn.

He depos'd, That he was at Mr. Tryon's Door with Mr. *Vanden-Ancbor*, and they went into the Warehouse, and found the Cash, &c. taken away, without breaking any thing; but that several Pieces of Plate were left: That soon after Mr. Tryon's Man came in, and said, he had been at Col. Turner's at Supper; but the Maid, when she came, said, they had been at one *Chamberlain's* a Goldsmith, and that a little after Col. Turner came in, and made a great Bustle: And the Deponent observ'd, that all the Doors were open'd with Keys, and he said they ask'd Mr. Tryon who bound him, and he said he thought one *Christmas*.

Christmas sworn.

He depos'd, That about two of the Clock on Friday Morning a Constable came and knock'd him up, and said he must go to Mr. Tryon, for he had been rob'd; and that he came out to him, and they carried him to the Exchange, and from thence to the Counter; and about ten the next Morning Col. Turner came and ask'd him what Justice he would go before, and they went before Sir *Thomas Adams*, and no Body charging him with any thing, Sir discharg'd him.

Page 1003.

Mr. Millington sworn.

He depos'd, That he came to Mr. Tryon's on Saturday in the Evening, and Mr. Turner told him of his being arrested, and said it prevented his getting the Jewels and the Remainder of the Money, and desir'd the Deponent would intercede, that he might go about the Jewels, and said, if he did not go presently, the Thief would be gone; and he said he was walking about *Tower-Hill*, or *White-Chapple*; but the Serjeants said, this was out of their Liberties, and they would not go with him; but some of them on his Importunity went with them to his own House, and his Wife was some time in private with him behind a Partition, and when they came out, he said publickly to his Wife, That there was a Man would be walking all alone on *Tower-Hill*, and bid her go thither, and he would deliver her

The TRYALS of

what he told her ; and about two Hours after the Jewels were brought by his Wife, and Mr. Turner carried them to Mr. Tryon's, and they were open'd, and they found one Carcanet Jewel wanting of 200 l. Value, and Mrs. Turner said, the Man told her, it was fallen behind a Chest, but did not doubt to procure it to morrow : That Sir Thomas Aleyn telling Turner he must commit him to Newgate, Turner said, then he had better have kept the Jewels ; and the Remainder of the Money being demanded, Turner said he would be bound for it.

Mr. Mannock sworn.

He depos'd, That Col. Turner told him in Newgate, Mr. Tryon was to give him 500 l. to get his Jewels and Money again, and that he had got him 500 l. and most of the Jewels, and believ'd he should have had them all, if Sir Thomas Aleyn had not secur'd him ; and he told him the five hundred Pounds he deliver'd Mr. Tryon were had at his own House.

Sir Thomas Chamberlain sworn.

He depos'd, That he was with Sir Thomas Aleyn at Mr. Tryon's, when the severall Examinations were taken : That they very much suspected Col. Turner, he being very familiar in the House, and coming often for Jewels, knew where every thing lay : That before Mrs. Turner came in with the Jewels, Sir Thomas Aleyn receiv'd a Note, whereby he was assur'd, that Turner and his Wife had been at the House in the Minorities ; which when they acquainted Mrs. Turner with, she swore and took on, and said, she was a lying Whore that said she had been there ; and Col. Turner came in, and curs'd and swore, and said, why do you vex and torment my Wife ? she is with Child. That Sir Thomas Aleyn saying he must make a Mittimus for him and his Wife, she said to her Husband, Do you send me of your Errands ? You shall send some body else another time, I thought it would come to this.

Sir Thomas Aleyn depos'd further, That William Turner being taken and brought before him as a Person of ill Fame, and likely to do such a thing, and Mr. Tryon looking on him, and suspecting him to be one of them, the Deponent demanded, when he saw Col. Turner, and William Turner answer'd he had not seen him to speak to him these three Years.

William Dawes sworn.

He depos'd, That William Turner was at his House drinking a Pot of Beer last Wednesday was Se'n-night, and a Neighbour came in, and told the Deponent, he was a dangerous Fellow; and that soon after Col. Turner came in and paid for the Beer, and William Turner and the Colonel went away together.

Rouse, Servant to William Dawes, sworn.

Page 1005.

He depos'd, That upon Wednesday the 6th of this Instant William Turner came to their House, and said he staid for Col. Turner; and after some time Col. Turner came in and paid for the Beer, and they went away together.

Peter Cully sworn.

He depos'd, That he was with Sir Thomas Aleyn, &c. at Mr. Tryon's, and asking Col. Turner, why the Money was carried from his House to the Minories, the Colonel affirm'd with an Oath, that there was none carried.

Mr. Watcher sworn.

He depos'd, That the last Saturday Col. Turner said on the Exchange, that Mr. Tryon should have all his Money and Jewels by three that Afternoon, and that if any Man could say he lost six penny worth of his Money or Jewels, he had two Fellows in Custody, that should suffer for it; and asking him why the Money was remov'd from his House to the Minories, the Colonel denied it with an Oath.

The TRYALS of

Mr. Garret sworn.

He depos'd, That when they were looking over the Money at Mr. Tryon's, Col. Turner said, Jack, take notice this is my Money; but they compar'd the Seal of one of the Bags with the Bishop of Winchester's, and found them agree.

Mr. Pilkington sworn.

He depos'd, That he was with Col. Turner at the Hoop-Tavern, and that the Colonel gave them that Account of their Usage of Mr. Tryon, and getting into his House, as Cole the Serjeant, and some of the other Witnesses had already depos'd.

Mr. Martin's Coachman sworn.

He depos'd, That about eight or nine of the Clock on Thursday Night, as he was driving by Mr. Tryon's, he saw four Men standing by his Door, and every one had a Handkerchief about his Neck, and a great Cudgel in his Hand, and they pull'd their Hats over their Faces, which made him suspect such a Business.

Page 1006.

Mr. Tryon depos'd further, That he believ'd William Turner was one of those who stood by his Bed-side, and struck his Tooth out: That at least he was very like him in Face and Size, and they had no Vizards on.

James Turner's Defence.

Col. Turner said in his Defence, That he and his Family were in Bed and asleep that Night Mr. Tryon was rob'd; and that the Constable coming to him, and acquainting him with the Accident, he went to Mr. Tryon's, who desir'd his Assistance to find out the Thieves; and that Mr. Tryon having been like to be rob'd a Year before, by a Gang that harbour'd about Tower-Hill, he went thither about twelve a Clock on Friday Night, and there he met one Wild, whom he suspected to be one of the Thieves, and charg'd him with it, and seiz'd him by the Collar, and Wild promis'd him to produce the things, if he would not prosecute him, and the Colonel promis'd on his Salvation he would not; and then Wild whistled, and there came another Fellow, whom he

he sent for the Money, and it was carried to the Colonel's House, and afterwards to the *Minories*, to induce *Wild's* Confederates to bring the rest of the Money and the Jewels thither, under a Pretence of sharing them: That when he was taken up, he was forc'd to send his Wife to *Tower-Hill*, who met *Wild*, and receiv'd the Jewels according to Appointment; and the Colonel added many other improbable Circumstances.

L. Ch. Just. *Hyde*. You have told a long Story about *Wild*; that you took him by the Throat, and that you were alone: What Weapons had you?

Page 1011.

Col. *Turner*. None, my Lord.

L. Ch. Just. *Hyde*. When you let him go, and he call'd other Fellows; in such a Case as this, would not they have knock'd you on the Head?

Turner. My Lord, *Wild* had engaged his Soul to me, and I had engaged mine to him.

L. Ch. Just. *Bridgman*. Great Security indeed!

Then Colonel *Turner* call'd some Witneses, and first,

Mosely the Constable.

He depos'd, That he came to Mr. *Tryon's* House, and found him bound on *Thursday* Night; that soon after Mr. *Tryon's* Man came in, and they ask'd him where he had been, and he said at Col. *Turner's* at Supper; whereupon the Deponent went to Col. *Turner's*, and ask'd, where his Sons were, and he said they were in Bed, and desir'd the Deponent to go up and see.

James Turner
calls his Wit-
neses.

A Servant of the Marquess of *Dorchester* call'd.

He depos'd, That Col. *Turner's* Sons were at his Lord's that Night the Robbery was, from between seven and eight till nine o' Clock.

The *TRIAL* of

to prevent their being surpriz'd, they are all guilty of the Burglary.

Page 1015.

The Lord Chief-Justice *Bridgman* added, That if the Door were not broke open, but opened by a Picklock, it was nevertheless Burglary; that as to the Story of meeting the Thief upon *Tower-Hill*, it ought to be rejected as a perfect Romance: And admitting that one of the Thieves came in at the Door in the Day-time, and let the others in in the Night, it was nevertheless Burglary in them all.

James Turner
convicted, and
the rest acquit-
ted.

The Jury having withdrawn, return'd in about an Hour, and brought in *James Turner* Guilty, but acquitted the rest.

James Turner
condemn'd.

The 19th of *January* Sentence of Death pass'd upon *Col. James Turner*, and he was hang'd the 21st of *January* in *Leaden-hall-Street*, near the End of *Lime-Street*, where *Mr. Tryon* liv'd.

Confesses the
Fact.

Page 1016.

Before he suffer'd, he confess'd, that himself, *William Turner*, one *White* a Solicitor, and *White's* Friend, committed this Robbery, but that his Wife or Sons knew nothing of it: And he restor'd *Mr. Tryon* the Carcanet of Rubies and Diamonds that was wanting.



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The Tryal of BENJAMIN KEACH, for a Misdemeanor, in Writing and Publishing a seditious Libel, before the Lord Chief-Justice Hyde at the Assizes held at Ailesbury, for the County of Bucks, the eighth and ninth of October, 16 Car. II. 1664.

Page 1017.

HE was indicted by the Name of Benjamin Keach, of the Parish of Winslow in the County of Bucks: And the Indictment sets forth, "That the said Keach, being a seditious, heretical and schismatical Person, &c. did on the first of May, in the sixteenth Year of the King, write, print and publish a seditious and venemous Book, intituled, *The Child's Instructor, or a new and easy Primmer*; wherein are contained, by way of Question and Answer, several damnable Positions, contrary to the Book of Common-Prayer, and the Liturgy of the Church of England. [Here the Criminal Passages are recited, which see afterwards in the Proofs.] "All which are laid to be seditiously, wickedly, and maliciously written, to the great Displeasure of God, the Scandal of the Liturgy, the King's Peace, &c."

The Indictment for publishing a Book call'd a new Primmer against Infant-Baptism, &c.

Mr. Keach insisted on having a Copy of his Indictment before he pleaded, in order to take Exceptions to it, but the Court told him he must plead first; whereupon he pleaded *Not Guilty*; and the Court ordered him a Copy of the Indictment, and offer'd him an Hour's time to consider of it: Or if he would find Sureties for his Appearance the next Assizes, he should not be try'd till then; but Mr. Keach desiring to be try'd presently, a Jury was sworn and charg'd with him, and the Witnesses for the King were call'd.

The Prisoner has a Copy of his Indictment granted him.

— Neal sworn.

He depos'd, That being Constable, Mr. Strafford a Justice of Peace sent for him, and took him with him to search Mr. Keach's House, and there they found about thirty of these Primmers (or Libels.)

Page 1018.
The Evidence of his writing the Book.

Mr. Strafford

The TRYALS of

Mr. Strafford sworn.

He depos'd, That he found the Primmers in Mr. Keach's House; and that Keach confess'd he wrote and compos'd the said Book.

Page 1019.

Then the Prisoner's Examination was read against him, wherein he acknowledges that he was the Author of the Book; and that he delivered part of the Copy to one Oviat a Printer at London: That about forty of them were sent down to the Prisoner, and he had dispers'd about twelve of them; and that the Price was 5 d. a piece.

Here the Clerk read the Passages laid in the Indictment, (*viz.*)

The Criminal
Passages laid in
the Indictment.

Qu. *Who are the right Subjects of Baptism?* Answ. Believers, or Godly Men only, who can make Confession of their Faith and Repentance.

L. C. J. Hyde. This is contrary to the Book of Common-Prayer, for that appoints Infants to be baptiz'd as well as Men and Women.

Clerk reads. Qu. *How shall it then go with the Saints?* Answ. *Oh very well! It is the Day that they have long'd for: Then they shall hear that Sentence, Come ye Blessed of my Father, inherit the Kingdom prepar'd for you. And so they shall reign with Christ on the Earth a Thousand Years.*

L. C. J. Hyde. This is an old Heresy, condemn'd by the Council of Constance, and hath lain buried ever since till now this Rascal hath reviv'd it.

Clerk reads. *Why may not Infants be received into the Church now as they were under the Law?* Answ. *Because the fleshy Seed is cast out, &c.* Qu. *What then is the State of Infants?* Answ. *Infants that die are Members of the Kingdom of Glory, though they be not Members of the visible Church.* Qu. *Do they then that bring in Infants by a fleshy, lineal way, err from the Truth?* Answ. *Yea, they do, for they make not God's holy Word their Rule, but presume to open a Door that Christ hath shut, and none ought to open.*

Part of the
Prisoner's new
Catech.

Clerk reads. I also believe that he rose again the third Day from the Dead, and ascended into Heaven, and there now sitteth at the Right Hand of God the Father; and from thence he shall come again at the appointed time of the Father to

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reign personally upon Earth, and to be the Judge of Quick and Dead.

Clerk. And in another Place thou hast wickedly and maliciously affirm'd concerning Gospel-Ministers, Christ hath not chosen the wise and prudent Men after the Flesh, not great Doctors and Rabbies, &c.

L. C. J. Hyde. Because Christ, when he was upon Earth, made choice of Tradesmen for his Disciples, therefore this Fellow would have Ministers to be such now; Taylors, and Pedlars, and Tinkers, and such Fellows as he is.

Keach. I desire Liberty to speak to the Particulars in my Indictment.

L. C. J. Hyde. You shall not be suffer'd to give the Reasons of your damnable Doctrine here, to seduce the King's Subjects.

Keach. Is my Religion so bad that I may not be allow'd to speak?

L. C. J. Hyde. I know your Religion, you are a Fifth-Monarchy-Man; you can preach as well as write Books; but I shall take such Order as you shall do no more Mischief.

The Prisoner a Fifth-Monarchy-Man.

The Chief-Justice having sum'd up the Evidence, the Jury withdrew, and having been out some time, one of them was admitted to speak with his Lordship in private, and the rest of the Jury returning into Court soon after, it was demanded of them, if the Prisoner was guilty of the Facts contain'd in the Indictment; the Foreman answered, he was Guilty in Part; and that there was something contain'd in the Indictment that was not in the Book: And the Court demanding what it was, the Foreman said, in the Indictment he was charg'd with these Words, *When the thousand Years shall be expired, then shall all the rest of the Devils be rais'd*; but in the Book it was, *Then shall the rest of the Dead be rais'd*.

Page 1020.

A Passage of the Book misrecited in the Indictment.

Clerk. Is he guilty of all the rest of the Indictment, that Sentence excepted?

Juryman. I can not in Conscience find him guilty, because the Indictment and the Book don't agree.

L. C. J.

KEACH'S TRYAL

L. C. J. *Hyde*. You may find him guilty of All, that Sentence excepted ; but why did you come in before you were agreed ?

Foreman. We thought we had been agreed.

L. C. J. *Hyde*. You must go out again and agree ; and as for you that say you can't in Conscience find him guilty, if you say so again without giving Reasons for it, I shall take an Order with you.

He is convicted.

Then the Jury withdrew, and in a little time return'd and brought the Prisoner in *Guilty* of the Indictment ; (that Sentence excepted wherein the *Devils* are inserted instead of the *Dead*.)

The Judgment against him.

After which the Court pronounc'd Judgment on the said *Benjamin Keach*, (*viz.*) That he should be committed to Prison a Fortnight without Bail ; That he should stand in the Pillory at *Aylesbury* and *Winslow*, with a Paper on his Head with this Inscription, *For Writing, Printing and Publishing a schismatical Book, entitled, The Child's Instructor, or a new and easy Primer* : That his Book should be burnt before his Face by the Hands of the common Hangman : That he should pay a Fine to the King of 20*l.* and remain in Prison till he found Sureties for his good Behaviour and Appearance the next Affizes, there to renounce his Doctrine, and make such publick Submission as should be enjoyn'd him.

This Sentence having been executed (except the Recantation) he was set at Liberty.

The End of the FIRST VOLUME.

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VOL. II.



STATE TRYALS.

VOL. II. PART I.

The Proceedings in the House of State-Tryals.
Vol. II.
Page 1.
*Commons, on the Impeachment
of EDWARD Earl of Claren-
don, late Lord Chancellor of
England, 19 Car. 2. 1667.*



CTOBER 26, 1667. The Earl was No general Im-
charg'd in the House of Commons peachment in
capital Cases,
till the Lord
Strafford's.
by Mr. Edward Seymour, *viva voce*, with many great Crimes. Where-

upon it was debated, whether they
should impeach him in general
Terms, till Articles should be pre-

par'd; or, that Witnesses shou'd be first examin'd,
to see whether the Charge could be made good.
And a Committee being appointed to search Prece-
dents, Sir Thomas Littleton reported, that in Cases
Criminal, the Proceedings had been sometimes by
Articles, and sometimes by Word of Mouth; but
that in capital Cases, there was no Instance of a ge-
neral Impeachment till the Earl of Strafford's; and
after him, of the Archbishop of Canterbury.

Page 2.

The Parliament
cannot declare
any thing to be
Treason, that is
not Felony at
Common Law.

In these Debates, it was said by Sir *Heneage Finch*, That there was no such thing as Treason by Common-Law, or by Equity at this Day; but only such Offences were Treason, as were contain'd in the 25th of *Ed. 3.* And that tho' there was a Proviso in that Act, about the Parliament's declaring what was Treason; he desir'd them to Note the danger of using those declaratory Powers, and fear'd it had brought them into a Reckoning of Blood, which they had not yet paid for; and altho' the Legislative Power of the Parliament was unbounded, yet it was not in the Power of King, Lords or Commons, to declare any thing to be Treason, which was not Felony at Common-Law before; and that by an Act made this very Parliament, they had shewn, that all that was done by *Strafford* apart, or together, was not Treason, and therefore it behov'd them to consider, lest they should appear to contradict themselves.

Page 3.

Lords to be
try'd by their
Peers only in
capital Cases.

He observ'd, that where a Charge was against a Lord for Misdemeanors out of Parliament, the Tryal was not to be by the Lords, but by Commoners; for that the Lords were his Peers only in Cases capital.

Upon the Debate, it was voted, that the Committee shou'd reduce the Accusation to Heads, and present them to the House, which was done. And they were as follow:

The Heads of
the Commons
Charge against
the Earl of *Clarendon*.

1. That the Earl of *Clarendon* design'd to raise a Standing Army, and advis'd the King to lay aside Parliaments and govern by a Military Power.
2. That he had said, the King was in his Heart a Papist or Popishly affected.
3. That he had receiv'd Bribes for procuring the *Canary* Patent, and other illegal Patents; and granted illegal Injunctions to stop Proceedings at Law against them.
4. That he had illegally imprison'd several of his Majesty's Subjects in remote Islands.
5. That he had procur'd the Customs to be farm'd at under Rates.
6. That he had been brib'd by the Company of Vintners to inhance the Price of Wines.
7. That he had gain'd a greater Estate, than cou'd be imagin'd to be lawfully got in so short a Time; and

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EDWARD Earl of Clarendon, An. 1667.

and procur'd several Grants of Lands from the Crown, to himself and his Relations.

8. That he had introduc'd an Arbitrary Government in the Plantations, and caus'd such as complain'd of it to his Majesty and Council, to be imprison'd.

9. That he had frustrated a Proposal, for bringing all *Mexico* and *St. Christophers* under the Government of this Crown.

10. That he held a Correspondence with *Cromwel* when he was beyond Sea, and so was adhering to the King's Enemies.

11. That he advis'd and effected the Sale of *Dunkirk* for less than the Artillery and Stores were worth.

12. That he had caus'd his Majesty's Letters Patents to be alter'd and rac'd, after they were seal'd with the Great Seal.

13. That several Causes concerning Lands, &c. had been determin'd at the Council Table by his Advice.

14. That he had caus'd *Quo Warranto's* to be issued against most of the Corporations in *England*, to extort great Sums from them.

15. That he receiv'd Bribes, for procuring the Bills of Settlement in *Ireland*.

16. That he had betray'd the Nation in all Negotiations relating to the late War; and betray'd and discover'd his Majesty's secret Council to his Enemies.

17. That he was the Author of that fatal Council, in *June 1666*, for dividing the Fleet.

These Articles having been read a second Time, it was mov'd they might be refer'd to a Committee, to see how far they were true; because Fame was too slender a Ground to warrant an Impeachment. And in this Debate it was said, that Witnesses wou'd not appear before them, especially those of the House of Lords; and it cou'd not be expected Commoners shou'd; because a Witness who speaks without Oath, is subject to Damages; and when the House shou'd be up, there wou'd be no Protection for them.

P 2

Page 4

At

Whether a Witness charged with a Person before the Commons with a Crime, be not subject to Damages; they being no Court of Record, and having no Power to administer an Oath.

At length the Question being put, whether to refer it to a Committee, it pass'd in the Negative. Then the Articles were read, to see if those Members who introduc'd them, cou'd offer sufficient Reasons to induce the House to impeach.

Page 5.

Where an Act of Pardon has Exceptions in it, the Party who expects any benefit by it, must shew he is not excepted.

As to the holding Correspondence with *Cromwell*, it was said, this was pardon'd by the Act of Indemnity: To which Mr. *Vaughan* said, that if the Acts were general, the Judges and the House ought to take notice of it; but if it had Qualifications, as this Act had, they were not to take Notice of it; and the Party must shew there was no Indictment or Outlawry against him (for such the Act excepted): Then the Act was read, and Mr. *Vaughan* acknowledg'd he was within the Clause of Indemnity, and so the Article was expung'd.

Page 6.

After every Article had been read, and the Member who introduc'd it examin'd what Grounds he had for the Charge; Sir Robert *Atkins* observ'd, that the Inducements to their Belief proceeded from a third Hand; and that tho' they might know the Credit and Impartiality of those who inform'd them, yet the House did not; and Mr. *Coleman* observ'd, that even in the Earl of *Strafford's* Case, the House did not proceed till one spoke of his own Knowledge, and another Member engag'd to make it good.

Resolv'd, that the House had sufficient Grounds to Impeach the Earl.

Whether the Power of the Parliament to declare new Treasons, be not taken away by 1 M.

Page 7.

Then the Question being put, whether the House had sufficient Inducement to Impeach, it was carried in the Affirmative.

The 9th of November the first Article was read, and great Debates arose in the House, whether the Matter therein charg'd amounted to High Treason: And whether the Declaratory Power of the Parliament was not taken away by 1 M. So that no Crimes might be declar'd Treasons at this Day, but what were enumerated in the 25th of Ed. III. Upon the whole, the Question being put, whether they shou'd charge him with Treason upon the first Article, it was carried in the Negative.

Page 8.

The 11th of November, the other Articles were read in the House, and voted till they came to the Tenth, concerning the Sale of *Dunkirk*: And here it was said by some, that *Dunkirk* was part of the

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EDWARD Earl of Clarendon; 'An. 1667.

Dominions of this Crown, and therefore it was High Treason to advise the King to the Sale of it; and that no Part of the Dominions of this Crown could be alienated but by Act of Parliament. But the Dispute drop'd, without determining whether it were Treason or not.

Then the 11th, 12th, 13th, 14th, and 15th Articles were read and voted: But when they came to the 16th, viz. The betraying his Majesty's Councils, they agreed to add the Words, *to his Majesty's Enemies*, for it might be to his Friends, and then it was not High Treason. Then the Question being put, whether to Impeach him of High Treason on this Article, It was carried in the Affirmative.

Resolv'd, that a Charge be carried up.

Resolv'd, that the Speaker and the whole House carry it.

The 12th of November, it being consider'd, that if the Speaker went up with the Charge, some Dispute might arise about carrying the Mace, it was resolv'd that Mr. Seymour shou'd carry it up; and accordingly he went, and at the Bar of the House of Lords, the Lord Keeper *Bridgman* being come to the Bar to meet him, he did, in the Name of all the Commons of *England*, Impeach *Edward Earl of Clarendon* of High Treason and other Crimes and Misdemeanors; desiring he might be sequestred from Parliament, and committed to safe Custody, and in convenient Time they wou'd exhibit Articles against him.

The 15th of November the Lords sent to desire a Conference, at which the Earl of *Oxford* deliver'd a Paper in Writing, importing that the Lords had not committed the Earl of *Clarendon*, because the Accusation was only of Treason in general.

Upon this arose several Debates in the House of Commons, and it was said, that by the Course of Parliament, the Lords ought to commit those who are generally charg'd by the House of Commons with High Treason. On the other Side, Mr. *Solici*, held, that there was a discretionary Power in the House of Lords, and in the *King's-Bench*, to admit to Bail or Commit in Cases of High Treason; but observ'd, that the Lords did not insist on their discre-

Page 10.

Resolv'd, to Impeach him of High Treason on the 16th Article, for betraying his Majesty's Council to his Enemies.

Mr. *Edward Seymour* carries up the Impeachment in general Terms.

The Lords refuse to commit the Earl, because the Impeachment was for Treason in general.

Page 11.

nary Power, if the Treason might be specified, and therefore propos'd the drawing up of Articles. But he said, an Impeachment was in the Nature of an Indictment, and must contain so much Certainty, as to put him to plead, that so he might not demur; that therefore the Charge must not be laid generally for adhering to the King's Enemies, but they must shew how he adhered, and they must add what the Council was that he betray'd, else he might avoid it, and refuse to plead. But that for the other Articles, indeed, they might lay them without signifying Time or Place; but in Treason, the Matter must appear in the Indictment.

Whether Articles of Impeachment ought to contain as much Certainty, as is requir'd in an Indictment, in Cases of High Treason.

Page 12.

Mr. Vaughan affirm'd, that for an Article in an Impeachment, there was not the same Certainty requir'd, as in an Indictment that was to be try'd in the King's Bench.

The Commons insist, that a Peer ought to be committed on a general Impeachment.

Sir Thomas Littleton said, it was not for the Honour of the House so easily to recede from their Privilege of Impeaching in general Terms: To whom the House agreed, and a Committee was appointed to draw up Reasons, why a Peer ought to be committed on a general Impeachment.

The 15th of November the Committee brought in their Reasons; and it was resolv'd, that a Conference shou'd be desir'd with the Lords, and the Reasons carried up.

Page 13.

The 25th of November, at a Conference, the Lords declar'd, that they had consider'd of the Reasons sent them by the Commons, but were not satisfie'd to secure the Earl of Clarendon, or sequester him from Parliament, until some special Treason were assign'd.

Page 14.

Sir Robert Horsey observ'd, that if there cou'd be Malice suppos'd in a Nation, it might be exercis'd in giving a particular Charge, as well as a general Charge; and that many of the Lords were convinc'd by the Reasons given at the Conference and concurr'd, thinking their Precedents good; and had enter'd their Protests in the Lords House, asserting the Right of the Commons to impeach generally; and that excepting the Spiritual Lords, thought the major Part of the Lords were for them. That shou'd the Commons give up this, they might be wrested out of all their Rights. Therefore they shou'd adhere.

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Then it was propos'd to enter a Protestation to preserve the Rights of the House, and give the Reasons of their Proceedings. And it was resolv'd, that a Committee shou'd be appointed to draw up a Declaration, to vindicate the Proceedings of the House.

Page 18.

The 3^d of December a Message was brought from the Lords by two of the Judges, that they had receiv'd a large Petition from the Earl of *Clarendon*, which intimated that he was withdrawn.

A Message from the Lords, that the Earl was withdrawn.
Page 19.

Whereupon a Motion was made, that care might be taken to get the Sea Ports stop'd, to which the House agreed; and Sir *Thomas Clifford*, Comptroller of the King's Household, was order'd to attend his Majesty, to desire the Ports might be stop'd.

The 4th of December it was reported, that his Majesty had given Order accordingly.

Page 20.

And a Message came from the Lords to desire a speedy Conference, to which the Commons agreed. And the Duke of *Buckingham* acquainted them, that the Lords had commanded him to deliver to them that scandalous and seditious Paper sent from the Earl of *Clarendon*; and desir'd them in convenient Time to return it to the Lords again, for it had a Stile they were in love with, and desir'd to keep it. The Paper was read, it was directed to the Lords *Spiritual and Temporal in Parliament assembled*, and shew'd, *The humble Petition and Address of Edward Earl of Clarendon*.

The Earl's Petition to the House of Lords communicated to the Commons.

He says, The Grief he sustains in being misrepresented to their Lordships was insupportable: And that those disadvantageous Reflections that had been made, were no way applicable to him.

1st, That as to the first, If his Estate had been answerable to what was reported, it might reasonably have caus'd his Integrity to be suspected: But that he had never receiv'd or taken a Penny, but what had been the lawful Perquisites of his Office in the best Times; and that it had been worth double to others, what it had been to him. That all the Favours he had obtain'd from the King for others, had not been worth 5^l. to him; so that he was as innocent from Corruption, as from any disloyal Thought, which after near Thirty Years Service of

He insinuates, that his Estate was not so great as was represented.

the Crown in some Difficulties and Distresses, he never expected wou'd have been objected to him in his Age. That what his Majesty had bestow'd on him in Lands, &c. was worth more than all he had besides; and tho' this indeed exceeded his Merit, yet others had been as fortunate in the same Bounty, who had as small Pretences to it.

And that he was not the Author of those Councils he was charg'd with.

2^d, That as to the second Imputation, That all Miscarriages and Misfortunes ought to be attributed to his Councils, as being chief Minister, and so causing every Thing to be done that he had a Mind to: He said, he serv'd a Master of great Understanding, who always join'd other Persons with him of great Ability and Experience, without whose Advice and Concurrence nothing had been done.

That for two Years after the Restoration, there was no difference in the Councils, or any Complaints in the Kingdom: But from the Time Mr. Secretary *Nicholas* had been remov'd, there had been great Alterations; and since that Time, the Petitioner's Credit at Court and in the Council had been much diminish'd, there not having been above one or two Persons brought into the Council, or prefer'd at Court, who cou'd be suspected of having any Kindness for him; and most of them of different Principles both in Church and State, and who had taken all Opportunities of less'ning his Credit with the King and others, by misrepresenting all he said or did; tho' his Majesty's Goodness and Justice was such, that it made little Impression on him.

Page 27.

That in his Opinion, the Kingdom's Misfortunes proceeded from the War, to which he was always averse, no Alliances being yet form'd with the Neighbouring Princes; nor cou'd this be imputed to want of care in his Majesty or the Council, nothing having been left unattempted in order thereto: But that the *Staniard* always insisted as a Preliminary upon the giving up *Dunkirk*, *Tangier* and *Jamaica*, which render'd it impracticable then; and that all Endeavours also had been us'd to prosecute a Treaty with *France*: But it was soon discern'd, that the Design of *France* was to draw his Majesty into such a near Alliance as might advance their

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EDWARD Earl of Clarendon, An. 1667.

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Designs, without which they had no Mind to enter into the Treaty propos'd. And this was the State of Affairs when the War was enter'd into with the *Dutch*, from which Time neither Crown much consider'd the making any Alliance with *England*: And that as he abhor'd the entering into this War, so he never gave any Advice towards the Management of it, save that he oppos'd the Payment of the Seamen by Tickets, and some other Particulars that added to the Expence.

That he was not conscious of having given Advice that had prov'd mischievous or inconvenient to his Majesty, or had been the sole Manager of Affairs, for he had not been twice alone with his Majesty the last Year, and very seldom the Two or Three Years preceding, and very few Things had of late been hearkned unto that he had propos'd.

That since the Distempers of the Times and the Differences between the two Houses was so great, and his Enemies gave out that he wou'd prevail with his Majesty to dissolve the Parliament, thereby to expose him to the Rage and Fury of the People: That he might not be look'd upon to obstruct his Majesty's Service, or the Unity and Peace of the Kingdom; he humbly besought their Lordships that he might not forfeit their Favour and Protection, by withdrawing himself from so powerful a Persecution, in hopes that he might be able hereafter to appear and make his Defence, when his Majesty's Justice shou'd not be obstructed by the Power and Malice of those who had sworn his Destruction.

The Paper being read, the Commons resolv'd, that it was scandalous and seditious, and a Reproach to the King and the publick Justice of the Nation.

His Petition voted scandalous and seditious.

Page 22.

The 13th of December, A Bill was brought from the Lords for the Banishment of the Earl of *Clarendon*: This it was alledg'd was an Abuse upon the Commons, they having propounded a Bill of Attainder; and it was resolv'd, that his Majesty shou'd be address'd to issue out his Proclamation for

A Bill brought into the House of Lords, for the Earl's Banishment.

The TRYAL of

for summoning the Earl to appear at a certain Day, and to apprehend him in order to his Tryal. And it was further resolv'd, to send to the Lords for their Concurrence in this Vote.

The 14th of *December*, A Message came from the Lords for a Conference; At which they gave their Reasons why they cou'd not concur, one of which was, that it was inconsistent with their Bill to banish and incapacitate him.

The Commons agree to the Bill for his Banishment.

After several Debates, whether they shou'd agree or disagree with the Lords in the Bill for his Banishment, it was carried for the Bill, Yeas 65, Noes 42.

Page 26.
Articles of High Treason exhibited against the Earl in the House of Lords by the Earl of Bristol.

There had been formerly (*viz.*) on the 10th of *July*, 1663, Articles of High Treason, and other heinous Misdemeanors, exhibited against the Earl of *Clarendon* (then Lord Chancellor of *England*) in the House of Peers by the Earl of *Bristol*.

The principal whereof were, That he had traiterously endeavour'd to alienate the Hearts of his Majesty's Subjects from him, by giving out that his Majesty was inclin'd to Popery, and had a Design to alter the Religion establish'd.

Page 27.

That in pursuance of the said traiterous Design, and to confirm the Scandal he had rais'd, he had advis'd his Majesty to allow his Name to be us'd to the Pope and several Cardinals, in soliciting a Cardinal's Cap for the Lord *Aubigny*, one of his own Subjects, and great Almoner to the Queen; and that he had directed several Priests and Jesuits, Superiors of their Orders in *England*, to write to their Generals at *Rome*, to solicit the Pope for the said Lord *Aubigny*, promising Favour to the Papists here, in case it cou'd be effected for him.

That contrary to the Interest of the Nation, he had perswaded his Majesty (against the Advice of the Lord General) to withdraw the *English* Garrisons out of *Scotland*, and demolish the Forts built there at a vast Expence to this Kingdom; and that he had advis'd and effected the Sale of *Dunkirk*, &c.

Page 28.

Whereupon the Lords order'd a Copy of the said Articles to be deliver'd to the Lord Chief Justice,

EDWARD Earl of Clarendon, An. 1667.

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tice, who with the rest of the Judges shou'd consider whether the said Charge had been regularly and legally brought in; and whether there were any Treason contain'd in it.

The Judges having consider'd of it, unanimously agreed upon the ensuing Answer, which on the 13th of July 1663 the Lord Chief Justice *Foster* deliver'd in.

That a Charge of High Treason cannot by the Laws of this Realm be exhibited by one Peer against another unto the House of Peers. And that admitting the Matters alledg'd in the Charge by the Earl of *Bristol* were true, altho' they were alledg'd to be traitorously done, yet there was no Treason in them; but they did not determine any thing concerning the accusing him of Misdemeanor, their Order extending only to Treason.

In which Resolutions of the Judges the Lords unanimously concur'd.

N. B. A Charge of High Treason cannot be exhibited by one Peer against another in the House of Lords legally.

Resolv'd also by the Judges, that these Articles did not contain any Treason.

Page 30.

In which Resolutions the Lords concur'd.



Page 21.

The Tryals of PETER MESSENGER, RICHARD BASLEY, WILLIAM GREEN, THOMAS APPLETREE, EDWARD COTTON, JOHN EARLS, WILLIAM WILKS, RICHARD FARREL and WILLIAM FORD, EDWARD BEDLE, RICHARD LATTIMER, THOMAS LIMMERICK, RICHARD WOODWARD, JOHN RICHARDSON and JOHN SHARPLESS, for High Treason, at the Sessions-house in the Old Baily, April 4. 20 Car. 2. 1668.

Four Indictments for High Treason, in levying War against the King.

MR. Attorney Sir *Jeffrey Palmer* having Orders to proceed against them, He order'd four Indictments to be prefer'd against those who were taken. One, against *Peter Messenger, Richard Basley, William Green and Thomas Appletree*. A second, against *Edward Cotton, John Earls, William Wilks, Richard Farrel and William Ford*. A third, against *Edward Bedle and Richard Lattimer*. And a fourth, against *Thomas Limmerick, John Richardson, Richard Woodward and John Sharpless*.

Each Indictment set forth, that they, with other Persons to the Number of five Hundred, to the Jurors unknown, on the 24th of March, in the 20th Year of the King, in *East-Smithfield and Moorfields* in the County of *Middlesex*, being arm'd in a Warlike Manner, with Swords, Half Pikes, Halbards, long Staves, and other Arms offensive and defensive, with Force and Arms did unlawfully and traiterously assemble themselves together, and Levy War against the King, &c.

On the first Indictment against *Basley, &c.* the Witnesses depos'd, That on the 24th of March aforesaid, a great Number of Persons, to the Number mention'd in the Indictment, were assembled in *East-Smithfield and Moorfields* on pretence of pulling down Bawdy-houses; and that *Basley* was their Captain,

Page 22.
Evidence on the first Indictment of their Assembling under pretence of pulling down Bawdy-houses, and actually pulling down several Houses.

tain, and had in his Hand a naked Sword, which he brandish'd over his Head. And that *Messenger* had a green Apron upon a Staff, which he flourish'd as Colours at the Head of the Company. That on the 25th of *March* they did the like and pull'd down some Houses. That *Peverel*, one of the Constables of *Middlesex*, having a Constable's Staff in his Hand, came with other Persons to aid him, and charg'd them to depart and keep the Peace; and thereupon *Basley* wounded him with his Sword, and some of them struck him down and took away his Constable's Staff: That the said *William Green* was among them, casting up his Cap and Hollowing, with a Staff in his Hand; and that whilst he was amongst them, he was knock'd down by a Party of the King's Soldiers, who came to suppress them, and was then taken; that *Basley* struck at the Ensign of the Soldiers; and that *Appletree* was amongst them both Days, and was the first that struck at *Peverel* the Constable; and was with them at *Buckingham-house* at *Saffron-Hill*, and pull'd part of the House down and the next House to it, and struck at one that advised him to be quiet.

On the second Indictment against *Cotton*, &c. the Witnesses depos'd, That great Numbers of People were assembled as above; and that Sir *Philip Howard* came with a Troop of the King's Guards and commanded them to disperse; and some of them enquiring who it was, were told it was the Duke of *York* who led the Guards, and that they thereupon threw Stones at Sir *Philip Howard*; and some of them said, unless the King wou'd give them Liberty of Conscience, *May-day* shou'd be a bloody Day. Others said, let us kill the Guards, and some, that they would come and pull down *Whitehall*, that they valued not the Guards who were but two or three Hundred, and that they cou'd easily knock them on the Head. That they continued together in this Manner till the Guards dispers'd them; and that *Cotton* was amongst them both Days, and was pulling down a House in *Shoreditch*.

The Evidence
on the second
Indictment.
Page 11.

On the third Indictment against *Bedle* and *Lattimer*, the Witnesses depos'd, That great Numbers of People met together as in the Indictment, at *Clerkenwell Green*, on pretence of breaking open Prisons and

The Evidence
on the third
Indictment, of
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releasing Prisoners; and that they came to a Prison call'd *New-Prison* in *Clerkenwell*, and said they were come to search for Prisoners, and broke open the Prison Doors and let out four Prisoners, two whereof were committed for Felony, and two for other Offences; and that they being charg'd to depart, said they had been Servants long enough, and now they would be Masters; and that some of them being taken, they cry'd out, *One die and all die*. That *Lattimer* was amongst them and very active in breaking the Prison, and was in the Prison after it was broke open: And that *Bedel* was there, and being pursued by one of the King's Soldiers, call'd out to his Company to face about and not leave him.

Evidence on the fourth Indictment.

Page 34.

Page 35.

The Jury find a special Verdict, according to the Evidence above said.

Page 36.

Page 39.
The Chief Baron Hales is of Opinion these Facts did not amount to High Treason.

Upon the fourth Indictment against *Limmerick*, &c. the Witnesses depos'd, That great Numbers were assembled together as in the Indictment, on pretence of pulling down Bawdy-houses; and that the said *Limmerick* led them as their Captain with a Club in his Hand, and was own'd by the Company to be their Captain. That he brought this Multitude to the House of one *Peter Buckingham*, and pull'd down the said House, and took away divers Goods of the said *Buckingham's* to the Value of 30 l.

The Jury being directed to find a special Verdict; found the Facts according to the abovesaid Evidence against *Messenger*, *Basley*, *Green* and *Appletree* upon the first Indictment; and against *Cotton* upon the second Indictment; against *Bedle* and *Lattimer* upon the third Indictment; and against *Limmerick* upon the fourth Indictment: And if on the whole Matter it should seem to the Court that they were respectively guilty of the Offences mention'd in the respective Indictments, then they found them Guilty —. But as for the other six, viz. *Earls*, *Wilks*, *Woodward*, *Farrel*, *Richardson* and *Ford*, the Evidence being insufficient as to them, the Jury acquitted them.

In Easter Term following the Judges met at the Chief Justice's Chamber. And my Lord Chief Baron Hales was of Opinion, that these Facts did not amount to Treason; for that the Stat. of 1 M. c. 12. says, That if any Persons, to the Number of Twelve or more, assemble with intent to pull down Enclosures;

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fures, &c. and continue together an Hour after Proclamation made for them to depart, it should be Felony; and if such Actions had been Treason at Common Law, it had been to no purpose to make them Felony.

But all rest of the Judges were of another Opinion, and answer'd, that this Objection had been made in the Case of *Bradshaw* and *Burton* in *Popham's Reports*, p. 122. And there it was resolv'd, That if People assembled with Force to alter the Laws, or to set a Price on Victuals, or to lay violent Hands on a Magistrate, or the like, and with Force attempt to put the same in Execution, this was Rebellion and Treason at Common Law. And they resolv'd, that the Statute of 1 M. intended only such Persons, who pretending any particular Injury as to their Common or other Interest in the Land inclos'd, &c. should assemble to pull them down, that indeed was not Treason; but if their Design was general to pull down all Inclosure in which they or any of them were not particularly concern'd, and they put this Design in Execution, this was Treason at Common Law. And it was held by all the Judges, that the 13th of *Eliz.* which makes the Intention in many Cases Treason, extends to nothing, but where if the Act had been done, it had been Treason at the Common Law.

Therefore the rest of the Judges unanimously resolv'd, That this Rising with intent to pull down Bawdy houses in general, or to break open Prisons in general and let out Prisoners, and putting such Design in Execution by Force, either of these was levying War against the King, and High Treason within the 25th of *Ed. 3.* And in *Popham's Reports*, p. 121. in the 29th of *Eliz.* it was resolv'd by all the Judges, That any Justice of Peace, Sheriff or other Magistrate, or any other Subject, may by the Common Law Arm themselves to suppress Riots and Rebellions, or resist Enemies; but the most discreet way, was to attend and assist the Justices or other the King's Officers in such a Case.

As to the particular Cases, as they were found upon the several special Verdicts, it was agreed by all the Judges, (except the Chief Baron, who doubted

All the rest of the Judges resolve, that these Offences were High Treason.

Rising to pull down Bawdy-houses in general, or break open Prisons in general, and putting such Design in Execution, is High Treason. Lawful for private Persons to Arm themselves, to oppose Riots, Rebellions, or common Enemies.

Page 40.
The Matter found against *Messenger, Baileys, Cotton and Limerick*, resolv'd to be High Treason, and they were executed.

But as to *Appletree*, and *Lattimer*, the Judges being divided in their Opinions, they were recommended to the King's Mercy.

As to *Green* and *Bedle*, they being only found to be present; and not found that any Act of Force was committed by them, or that they were aiding or assisting, they were discharg'd.

doubted on the Main) That as to *Messenger* and *Basley* in the first Verdict, and *Cotton* in the second Verdict, and as to *Limmerick* in the fourth special Verdict, the Matter found against these four was High Treason, and accordingly they receiv'd Judgment and were executed. But as to *Appletree* in the first special Verdict, and *Lattimer* in the third, there was a difference in Opinion, whether the Verdict was sufficiently found against them to judge it High Treason; for besides the Chief Baron, *Atkins*, *Tyrril*, *Windham* and *Wild*, held that the Verdict was not sufficient, because it was not expressly found that they were aiding and assisting; but the Chief Justice, *Turner*, *Twisden*, *Archer*, *Rainsford* and *Morton*, thought the Verdict full and plain as to the other; for there being several Acts of Force found to be committed by them in pursuance of their Design, there was no need to find them to be aiding and assisting: However, there being this difference in Opinion as to these Two, the Chief Justice recommended them to his Majesty's Mercy, and they were spar'd. And as to *Green* in the first special Verdict, and *Bedle* in the third, the Judges all agreed, that the Verdict was not full enough as to them, to judge their Offence High Treason; because the Verdicts only found that they were present, and found no particular Act of Force committed by them, and did not find that they were aiding and assisting to the rest; and it was possible one might be present in such a Rabble out of Curiosity; and whether they were aiding and assisting is a Matter of Fact, which ought to be expressly found by the Jury, and not left to the Court to judge upon any colourable Implication. Therefore these two were discharg'd.



*The Tryal of ROBERT HAWKINS, Clerk,
of Chilton in Com. Bucks, for Felony,
at the Assizes at Ailesbury, before my
Lord Chief Baron Hales, March 11.
20 Car. II. 1668.*

Page 41.

THE Indictment sets forth, " That Robert Hawkins, late of Chilton in the County of Bucks, Clerk, upon the 18th of September, in the twentieth Year of King Charles II. with Force and Arms, &c. at Chilton aforesaid, in the County aforesaid, into the Dwelling House of one Henry Larrimore feloniously did enter, and two Gold Rings of the Value of ten Shillings each, one white Holland Apron of the Value of one Shilling and sixpence, two Pieces of Gold, each of them of the Value of ten Shillings, and nineteen Shillings in Silver of the Goods and Chattels of the said Henry Larrimore then and there being found, did feloniously steal, take, and carry away, against the King's Peace, his Crown and Dignity, &c.

The Indictment for Felony.

To which Indictment Mr. Hawkins pleaded Not Guilty.

Then the Jurors were call'd, and the Prisoner having challeng'd two, and the Prosecutor one for the King, Twelve were sworn.

After Proclamation made for Evidence as usual, and the Jury were charg'd with the Prisoner, the Witnesses were call'd, and first Henry Larrimore, the Prosecutor.

Page 42.

Larrimore depos'd, That on Friday Sept. 18. 1668, between twelve and one a Clock at Noon he lock'd up his Doors, and went into a Hemp-plat about two Furlongs from his House with all his Family to pull Hemp; that coming home an Hour and half before Sun-set he found his Doors open, and run up Stairs to a Loft over the Chamber where he lay, and looking thro' the Chinks of the Boards, there he saw the Prisoner, Mr. Hawkins, rifling a Box, in which among other Goods was a white

Larrimore the Prosecutor, a Parishioner of the Prisoner's, deposes he saw him rise a Box in his House, and steal his Money, &c.

The *TRIAL* of

Holland Apron, and a Purse in which was two Gold Rings of the Value of ten Shillings each, two ten Shilling pieces of Gold, and nineteen Shillings in Silver; all which he saw the Prisoner turn out of this Purse (which the Witness show'd in Court) except a small piece of Silver or two; and that he carried away the said Rings and Money with the Holland Apron; that the Prisoner hearing some Noise, the Deponent saw him glance by the Stair-foot Door, and so run out of his House down the Yard, with a great Bunch of Keys; and the Deponent saw the Prisoner hide himself in a Close where there were some Beans and Weeds: That the next Day being *Saturday* the 19th, he procur'd a Warrant from Sir *Richard Piggot* to search for his Rings and Money, and with the Constable of the Place and some others he went to search the Prisoner's House, who refusing to open his Doors the Constable broke them open, and in a Basket fill'd with Paper, Rags, and other Trumpery, he found one of the Rings and a five Shilling piece of Silver, which he positively swore were the same which he had seen the Prisoner the Day before take out of his Purse.

Lord Chief Baron. Was your Chamber Door, where the Box stood, lock'd at that time?

Lar. I can't certainly tell, my Lord.

L. C. B. Was the Box lock'd then?

Lar. It was lock'd.

L. C. B. Were the Locks of the Doors and Box broken?

Lar. I can't certainly tell; but I believe they were pick'd open with a Picklock.

Hawkins. Why did not *Larrimore*, when he saw his Doors open, which he expected to have found lock'd, call some of his Neighbours to assist in searching the House, and securing me, (or the Person whoever it were) that he found robbing of him?

To this *Larrimore* answer'd, He did not then well consider what he did.

Hawkins. If he saw me commit the Robbery in his House, why then did he search other Houses for the Goods he saw me steal?

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Lar. I had been robb'd at several other times.

Hawkins. How came he not to charge me positively with the Felony before Sir Richard Piggot, of whom he had the Warrant, if he had been sure I robb'd him?

Page 44.

To this *Larrimore* made no direct Answer.

Then *Henry Larrimore* the Son was call'd, and the Prisoner objected to his Testimony, that he had not been baptized; but the Court told him, that he might be a Witness notwithstanding.

Larrimore the Son depos'd, That on the 18th of September, coming home a little after his Father, he saw the Prisoner run out of the House down his Father's Yard with a great Bunch of Keys in his Hand, and that he hid himself in a Close of Beans and Weeds; and that when the Deponent came into the House, he ask'd his Father if Mr. *Hawkins* had been there, and his Father answer'd, he had done too much there, for he had robb'd him.

Hawkins. Did your Father say no more to you? Did not he enquire which Way I ran?

Lar. jun. He said no more, but that you had robb'd him.

Joan Beamsley was sworn:

She depos'd, That on the 18th of September, about an Hour and half before Sunfet, she met *Henry Larrimore* the younger, and having the Tooth-ach ask'd him for some strong Water, and he told her he would give her some if she would go with him to his Father's; and as they were going together, they saw the Prisoner run out of *Larrimore's* House with a Bunch of Keys, and that he hid himself in a Close of Beans; and that she heard *Larrimore* tell his Son, the Prisoner had robb'd him.

L. C. B. Here is Evidence enough to hang twenty Men.

Hawk. I doubt not but to clear myself, notwithstanding this Evidence.

Richard Maine, the Constable, sworn.

He depos'd, That on Saturday, the 19th of September last, *Henry Larrimore* the elder brought him a Warrant from Sir Richard Piggot to search Mr. *Hawkins's* House for Money and Goods the said *Larrimore* had lost, and that the Deponent took along with

Page 45.

The TRYAL of

him *Thomas Beamsley* the Tything-man, and some others to assist him; and that when they came to *Hawkins's*, the Prisoner's House, he refus'd to open his Doors, and they broke them open, and went into the House, and *Larrimore* the elder found in a Basket the Gold Ring and five Shilling piece, (the Prisoner being by when he found them) and that thereupon he had *Mr. Hawkins* before *Sir John Croke*, who committed him to Prison, and on Sunday Morning the Deponent carried him to *Ailesbury*.

Dodsworth Croke Esq; *Thomas Beamsley* and *Larrimore* the younger depos'd to the same Effect, and confirm'd the Constable's Testimony.

Hawkins. Mr. *Maine*, did *Larrimore* desire you to search my House alone, and tell you that he saw me rob him the Day before?

Maine the Constable. He desir'd me to search several Houses, and did not tell me that he saw you rob him.

Hawkins. Was it *Larrimore* himself that found the Ring, and five Shilling piece?

Constable. It was *Larrimore* the elder that found them.

Hawkins. Was I in the same Room when he found them?

Constable. Yes ——— But *Mr. Charles Wilcox* and *Nicholas Faulkener* depos'd, That they were with the Prisoner in the Hall, while *Larrimore* pretended to find them in the Buttery; and they also depos'd, that the Constable forc'd the Prisoner to go before *Sir John Croke*.

Hawkins. Why did you advise the Jaylor to load me with Irons?

Constable. I did not advise the Jaylor to do so — But the Jaylor depos'd, That the Constable told him the Prisoner was a notorious Picklock, and therefore advis'd him to watch him narrowly, and load him well with Irons.

Hawkins. Pray, *Sir Richard Piggot*, when *Larrimore* came for the Warrant to search, did he not say he suspected several Persons for robbing him of them, and that I was but one of the suspected Persons?

Sir Richard Piggot, being upon the Bench, acknowledged this to be true.

Hawkins.

Hawkins. And yet *Larrimore* swears, he saw me steal them out of his House the 18th of *September* an Hour and half before Sunset; which I desire the Court and the Jury would take notice of.

Margaret Larrimore, the Wife of *Henry Larrimore*, was sworn.

She depos'd, That when she was Servant to her Husband, she had seen the Prisoner in the Night time lurking about his House, and she believ'd he lay there for no good Intent.

Hawkins. How long may this be since?

Marg. Lar. It might be about the time my Master was robb'd.

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Hawk. Did you speak or call to me when you saw me there?

Marg. Lar. No; for I was frighted at it.

Richard Mantill, Son in Law to *Larrimore*, and his Son *William*, depos'd to the same Effect as the Wife had done.

Dodsworth Croke Esq; was sworn.

He depos'd, That he was confident the Ring produc'd in Court was *Larrimore's* Ring, for that the Deponent had pawn'd it to him.

Mr. Goad was sworn.

He depos'd, That at the last *Buckingham* Sessions he pawn'd a five Shilling piece to *Larrimore* for other Money, and desir'd *Larrimore* to let him have the same again, and that thereupon *Larrimore* put a Mark upon it, and the Deponent verily believ'd it was the same that was produc'd in Court, and found in the Prisoner's House: And *Larrimore* affirm'd it was the same piece that was pawn'd to him by *Mr. Goad*.

Hawkins. I desire the Jury will observe, that that Sessions was held *July 9. 1668*, and the Difference between me and *Larrimore*, for Tythes, began at *Mich. 67*. And *Larrimore* told his Brother *Beamsley*, that he had lost this Ring and Five Shilling piece before the Difference began; all which is impossible to be true.

John Chilton was call'd.

He depos'd, That *Mr. Hawkins* brought him a Pair of Boots to put new Legs to them, and that the Deponent told the Prisoner he would lay them

The Prosecutor endeavours to prove Felonies not laid in the Indictment.

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in his Shop Window, and he might take them as he came by, for he should be abroad ; which accordingly the Prisoner did, and paid the Deponent for doing them at Sir *John Croke's* ; but that when the Prisoner came to demand his Tythes, and sued for them, then this *Larrimore*, *Mr. Dodsworth Croke*, *Richard Maine* the Constable, and others, came to the Deponent, and lay at him Night and Day to charge the Prisoner with Felony, for stealing the Boots ; and they would have forc'd him to fetch a Warrant to search for them, and threaten'd in case he would not, that Sir *John Croke* would indict him at the Assizes, as Accessary to the stealing his own Goods : And *Larrimore* said, he would make him swear that *Mr. Hawkins* had stolen his Boots, and subpœna'd him to the Assizes for that purpose.

Lar. My Lord, this Fellow is hir'd by *Mr. Hawkins* to swear this.

Chilton. I am not hir'd to swear by *Mr. Hawkins* ; but *Thomas Croxton* told me last Monday, if I would swear *Mr. Hawkins* stole my Boots, he would bear me out against *Mr. Hawkins*, as far as one hundred Pounds would go ; and if that would not do, as far as five hundred Pounds would go ; and if I doubted it, he would give me a Bond to make good his Promise.

Hawkins. My Lord, this is an easy way for the Fanaticks to pay their Tythes. If they can but hang up the Clergy, they may cease their Pleas for Liberty of Conscience. I desire the Court and the Jury will observe, that this *Chilton* is one of *Larrimore's* Witnesses, and yet he swears, that *Croxton* and others us'd their utmost Endeavours to persuade him to charge me with Felony.

Anne Scoly and *John Sanders* appear'd for the Prisoner, and attested the Truth of what *Chilton* had depos'd concerning *Croxton*. On the contrary, *Thomas Welch* was sworn for the King, and depos'd, that he heard *Chilton* say, that *Mr. Hawkins* had stolen a pair of Boots from him.

Boyce was sworn.

He depos'd, That about two Years ago he saw the Prisoner in the Company of one Noble, who was drunk and fallen asleep ; and that the Prisoner had his Hand in his Pocket ; and that Noble told

the

the Deponent, that at that time he lost a Gold Ring and a piece of Gold out of his Pocket.

Hawkins, I desire that *Noble* may be sworn, if he be here.

Larrimore, I could not find him.

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Hawkins, Mr. *Boyce*, did *Noble* ever tell you I had pick'd his Pocket of the said Ring, or piece of Gold, or any thing else?

Boyce, No: But he said he lost them at that time.

Hawk, If *Noble* was drunk, as you say, 'tis possible he might be mistaken; but can you say any thing as to *Larrimore's* being robb'd?

Boyce, No, not I; but *Larrimore* subpoena'd me here, and is to bear my Charges.

Here Mr. *Hawkins* observ'd, that *Larrimore* had taken great Pains to move *Chilton* to charge him with Felony, for stealing his own Boots, and had rid about the County to procure Witnesses against him, who could say nothing to the Crime he was charg'd with, and particularly this *Boyce*, who had been fetch'd from *London* only to blacken him: And he appeal'd to the Court and the Jury, if these Practices did not discover Abundance of Malice in the Prosecutor; and if that appear'd, it would render his Evidence to be very much suspected——

Mr. *Hawkins's*
Defence.

That this *Larrimore* was a notorious Anabaptist, and an Enemy to the Church of *England* and Ministry in general, but particularly to himself, he having sued him for Tythes, and indicted him for not coming to Church, or baptizing his Children: That *Larrimore's* Malice had sufficiently appear'd before this, by dissuading those that ow'd him Money from paying him, and persuading others, whom he ow'd Money to, to arrest him: By dissuading those he had sued for Tythes from agreeing with him, and telling them Sir *John Croke* would force him to run his Country, &c. And if the Jury doubted of any of these Particulars, he was ready to prove them.

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Mr. *Hawkins* had procur'd a Certificate, sign'd by above a hundred of his Neighbours, attesting the Truth of what he asserted in his Defence at this Tryal, concerning the Conspiracy against his Life by the said *Larrimore* and Sir *John Croke*; but that

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was not read at the Tryal : [Possibly, because such a Certificate is no Evidence.]

Page 50.

Mr. *Hawkins* proceeded in his Defence, and said, it was very unlikely he should commit a Robbery in his own Parish in the Day time, where every body that saw him must needs know him ; and that if he had been conscious of his Guilt, he had twenty four Hours time to have made his Escape ; and it was strange he could find no other Place to conceal this Ring and five Shilling piece, but in a little Basket that hung up upon a Pin ; and that if *Larrimore* had seen him rob him, it was strange he did not tell his Neighbours of it, or take any care to secure him 'till the next Day ; nor did he declare it to Sir *Richard Piggot*, from whom he fetch'd the Warrant to search, as might appear by the Contents of it.

The Ch. Bar. observes, that the Warrant the Prosecutor had procur'd to search for his Goods was dated the Day before he pretended the Robbery was committed.

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Hereupon my Lord Chief Baron order'd the Constable to produce the Warrant ; and it being deliver'd to my Lord, he observ'd, that it bore Date before the Robbery was committed.

L. C. B. Larrimore, thou art very cunning to be provided with a Warrant a Day before you was robb'd. It seems you knew upon the 17th Day that you should be robb'd on the 18th, and that this Person now at the Bar should rob you. But, Mr. *Hawkins*, if you were innocent of this Robbery, why did you refuse to open your Doors, and let your House be search'd ?

Hawkins. Most of those Persons present were my inveterate Enemies ; As for Sir *John Croke* and *Larrimore*, they had often threaten'd to pull down my House, and hir'd People to make a forcible Entry upon it ; particularly they hir'd one *Jaires* to get down the Chimney, and open my Doors, when we were all abroad ; they had also contracted with one *Tyler* for the same Purpose ; Besides, they had an Execution against me, which *Larrimore's* Son had a few Days before executed in part, and he was then present : And, my Lord, I offer'd at the same time that Mr. *Sanders*, the other Constable, who liv'd but at next Door, might search as narrowly as he pleas'd.

John

John Accrman was call'd.

He depos'd, that being call'd by Sir *John Croke's* Sons, he assist'd in setting up the Ladder for *Jaires* to go up and get down the Prisoner's Chimney, and that they and *Larrimore* stood by all the while to watch.

As to the Execution *Mr. Hawkins* mention'd, he call'd upon the Sheriff to attest the Truth of it.

And as to the Prisoner's offering the other Constable to search, *Reed, Sanders*, and several others, appear'd and attested it.

With which Evidence the Lord Chief Baron was well satisfied, and said the Business appear'd very foul; and looking towards Sir *John Croke*, ask'd, if that were the Sir *John Croke*, who was concern'd in that Business?

Hawkins. I doubt not to make appear to the World, that Sir *John* is deeply concern'd in this Conspiracy.

Then *Mr. Wilcox* was call'd, and appear'd.

He depos'd, that on *Friday* the 18th of *September*, 1668, the Day the Prosecutor pretended the Robbery was committed, he was at the Prosecutor's House in *Chilton* from Noon till it was near Night with *Larrimore* the Prosecutor, and that they were driving a Bargain about Tiles and other things; and that *Mr. Hawkins* was not at *Larrimore's* all that Afternoon; nor did the Deponent hear then, that *Larrimore's* House was robb'd, which he must needs have done, if he had been robb'd that Afternoon.

Larrimore. It was upon *Thursday* that *Mr. Wilcox* was at my House.

Sir *Richard Piggot*. My Lord, I am sure *Larrimore* and that Fellow the Constable were both at my House on *Thursday* the 17th of *Septemb.* as the Warrant testifies, and therefore it could not be that Day.

L. C. B. *Mr. Wilcox*, what time of the Day did you come from *Larrimore's* House?

Wilcox. I came from thence on *Friday* about Sunset; it was quite dark before I got home, which is about a Mile and half from thence, and I made what haste I could.

L. C. B. Do not you remember, *Larrimore*, he was at your House *Friday Sept. 18. 1668*?

Lar.

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Lar. No, my Lord; sure it was not upon that Day I was robb'd.

Mr. Brown was call'd, and appear'd,

Evidence of a
Conspiracy by
Sir John Croke,
the Prosecutor
and others, to
lay Felony to
the Prisoner's
Charge.

He said, that Sir John Croke and this Larrimore had threaten'd, that if he came down to this Assizes to testifie what he had heard of this Conspiracy, they would ruin him and his Family, and for that reason he dare not speak; but the Court promising him Protection he gave this Evidence.

Mr. Brown. Being intrusted by Sir John Lentall, as Keeper to Sir John Croke, who is a Prisoner in the King's Bench, on Wednesday the 16th of Sept. last, as I was in Bed at Sir John Croke's House in Chilson, I heard a great Noise; and fearing they were contriving Sir John Croke's Escape, I started out of Bed in my Shirt, and stood at the Dining Room Door behind the Hangings; and there I heard this Larrimore tell Sir John Croke, that he had undone him by causing him to contend with the Parson; for that he had enter'd him in most of the Courts in England, and summon'd him into the Crown - Office and Chancery, and he could not maintain so many Suits. Sir John replied, is that all? Come Brother Larrimore be contented, we will have one Trick more for Hawkins yet, which shall do his Work. Larrimore answer'd, you have put me upon too many Tricks already, more than I can manage, and the Parson is too hard for us still. Sir John reply'd, if thou wilt but act, I will hatch enough to hang Hawkins; can'st not thou convey some Gold or Silver into his House, and have a Warrant ready to search his House? And then our Work is done; and says he, do you but go to Sir John Piggot, and inform him you have lost Money and Goods, and desire his Warrant to search for them; and then take Dick Maine the Constable, who is one of us, and will do what we desire him, and search the House, and when you find these Things, charge him with flat Felony, and force him before me, and I'll send him to Jayl without Bail, and we will hang him at the next Assizes.

And accordingly the Saturday following, being the 19th of September, as I was coming home; I heard Mr. Hawkins had robb'd Larrimore, and coming into

Sir

Sir John's House, I saw a Paper lie upon the Hall Table full of Writing, and Larrimore with the Constable and others brought Mr. Hawkins before Sir John Croke, who took up the said Paper, and read to the Constable, and said, that it was M. Hawkins's *Mittimus*; which *Mittimus* all the Company know was written before Mr. Hawkins was brought before Sir John Croke. On the Sunday Morning I went to the Alehouse, where they had kept Mr. Hawkins all Night, and saw them carrying him to Jayl. I said to Sir John, when I came home, they have carried the poor Parson to Jayl; and he answer'd, let him go, and the Devil go with him, and more shall follow after: Have I not often told you, says he, if my Brother Larrimore and I laid our Heads together, no body could stand against us? And I replied, yes Sir John, I have often heard you say so, but never believ'd it till now.

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L. Ch. Bar. Is all this true, which you have related?

Brown. Yes, my Lord; and there sits Sir John Croke (pointing to him) who knows that every Word that I have said is true.

Soon after Sir John Croke stole off the Bench, without taking leave of the Chief Baron.

Lar. My Lord, what I have sworn as to Mr. Hawkins is true.

L. C. B. Larrimore, thou art a very Villain; nay, I think thou art a Devil — Gentlemen, where is this Sir John Croke? *It was answer'd, he was gone.*

L. C. B. Gentlemen, I must acquaint you, Sir John Croke sent me this Morning two Sugar Loaves, to excuse his Absence yesterday, but I sent them back again: I did not then so well know what he meant by them, as I do now. Sure, Sir John does not think the King's Justices will take Bribes; some body may have us'd his Name; [*Here the Chief Baron shew'd Sir John's Letter.*] Is this his Hand? *Some of the Justices on the Bench said, they believ'd it might; and it being compar'd with the Mittimus, the Hands appear'd to be the same.*

L. Ch. Bar. Mr. Hawkins, have you any more to say?

Hawkins,

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Hawkins. I hope your Lordship and the Jury are fully satisfied of my Innocence : But if not, I desire to know, wherein I have not given Satisfaction.

L. Ch. Bar. You of the Jury, what do you think ?

Jury. It is a very plain Case, my Lord.

L. Ch. Bar. And I think so too, but 'tis a very foul one. *Then his Lordship proceeded to sum up the Evidence, and direct the Jury.*

The Ch. Baron directs the Jury.

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His Lordship observ'd, that the Prosecutor, to shew his pretended Moderation, had indicted the Prisoner only of Felony in stealing his Rings and Money, but in his Evidence had endeavour'd to charge him with Burglary, swearing that he had broke open or pick'd the Locks of his Doors.

Page 55.

That as to the finding the Money and Rings in a Basket in the Prisoner's House, *Larrimore* being the first Man that enter'd the Room where the Basket was, and the Person who took the Basket down, it was very easy to suppose, he convey'd those things into it : And that it appear'd upon the Evidence, and from all the Circumstances, to be a most foul and malicious Conspiracy against the Life of Mr. *Hawkins*.

Mr. Hawkins is acquitted.

Then the Jury, without stirring from the Bar, gave their Verdict, that the Prisoner was Not Guilty.

Mr. *Hawkins* mov'd, that he might be discharg'd without paying his Fees, for that he was very poor ; this and other Troubles the Prosecutors had brought upon him having cost him a great deal of Money. My Lord Chief Baron answer'd, he could not help it ; he could not give away other Peoples Rights ; if they would not remit their Fees, he must pay them.

As soon as the Tryal was over, Sir *John Croks*, *Larrimore* the Prosecutor, and their Accomplices in the Conspiracy, fled privately out of Town.

The

The Tryal of WILLIAM PENN, and WILLIAM MEAD, for a Riot and Conspiracy, at the Sessions held at the Old Bailey, the first, third, fourth and fifth of September, 20 Car. II. 1670, before Sir Samuel Starling, Lord Mayor, Tho. Howel, Recorder, Alderman Tho. Bludworth, and the rest of the Commissioners there.

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THE Indictment sets forth, " That the said
" *William Penn, and William Mead*, with divers
" other Persons, to the Number of three hundred,
" on the 14th of *August*, in the twenty second Year
" of the King, Did unlawfully and tumultuously
" assemble themselves together in *Gracechurch-street*,
" to the disturbance of the Peace : And that the
" said *William Penn* (by Agreement between him
" and *William Mead*, and being abetted by him) did
" there speak and preach to the said *William Mead*,
" and the rest so assembled ; whereby a great Con-
" course and Tumult was made and continued, to
" the great Terror and Disturbance of his Majesty's
" Liege People, and against the Peace, &c. "

The Indictment
for a Riot and
Conspiracy.

To which Indictment the Prisoners respectively
pleaded *Not Guilty*.
Then they were set aside, and the Court pro-
ceeded to other Business ; and the third of *September*
they were order'd to be brought to the Bar again,
and one took off their Hats as they came into Court ;
but the Court order'd an Officer to put on their
Hats again, and they stood with their Hats on.

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The Recorder demanded of the Prisoners, if
they did not know it was the King's Court ? And
why they did not pull off their Hats, and pay the
Respect to it they ought ?

T. Howel.

Penn answer'd, he knew it to be a Court, and he
suppos'd it to be the King's ; but he did not think
the pulling off a Hat shou'd any Respect : Then
the Court fin'd them forty Marks apiece for their
Contempt :

The Prisoners
fin'd 40 Marks
each, for stand-
ing before the
Court with their
Hats on.

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Contetht : Whereupon *Penn* desir'd it might be observ'd, that they came in with their Hats off, and the Court had order'd them to be put on, and therefore the Bench ought rather to have been fin'd than they.

The Jury being sworn, the King's Witnesses were call'd; and first,

Lieutenant *James Cook* was sworn.

Cook's Evidence of Penn's preaching to the Mob in Gracechurch-street, and Mead's abetting him.

He depos'd, That he was sent for to disperse a Meeting in *Gracechurch-street*; and that he saw Mr. *Penn* speaking to the People there; but could not tell what he said; and that he endeavour'd to get to him, but could not for the Crowd; and Mr. *Mead* came to the Deponent, and desir'd him to let Mr. *Penn* go on, and when he had done, he would bring him to the Deponent; and that the Deponent believ'd, there might be three or four hundred People assembled there.

Richard Read, the Constable, was sworn.

The Constable deposes, when he came to disperse them, he was opposed.

He depos'd, That on the 14th of *August* he found a great Crowd in *Gracechurch-street*; and heard Mr. *Penn* preaching to them, but could not distinguish what he said: That he endeavour'd with his Watchmen to pull him down, but the People kick'd them; and that he saw Capt. *Mead* speaking to Lieutenant *Cook*, but did not know what he said; and that he thought there were four or five hundred People gather'd together.

Another Witness was sworn.

He depos'd, He saw great Numbers of People, and he thought Mr. *Penn* was speaking to them, but he could not hear what he said; but that he did not see Capt. *Mead* there.

Rec. What say you, Mr. *Mead*, were you there?

Mead. It is a Maxim in your Law, *Nemo tenetur seipsum accusare*: Why dost thou endeavour to ensnare me? Is this like a Judge, who ought to be of Council for the Prisoner?

Page 58.
Penn justifies their Meeting.

Penn. We declare it to all the World, we believe it to be our indispensable Duty to meet incessantly upon so good an Account; nor shall all the Powers on Earth divert us from adoring our God who made us,

Court.

Court. You are not here for worshipping God, but for breaking the Law.

Penn. I affirm I have broken no Law, and would know upon what Law you ground the Indictment?

Rec. Upon the Common Law.

Penn. Where is that Common Law? If it were Common, it should not be hard to produce.

Rec. Must I run over all the adjudg'd Cases, which we call Common Law, to satisfy your Curiosity?

Ld. Mayor. It is call'd Common, to distinguish it from Statute Law: You must understand, that such Assemblies endanger the publick Peace, and therefore the Law deems them unlawful, unless they have a Warrant for their Assembling.

Penn. My Liberty, which is next to Life, is now concern'd; and I say again, unless you shew me and the People the Law you ground your Indictment upon, your Proceedings are arbitrary: The Question is not, whether I am guilty of this Indictment, but whether this Indictment be legal?

Rec. If I should suffer you to ask Questions 'till to morrow, you would be never the wiser.

Penn. That is according as the Answers are: I design no Affront to the Court; but if you deny me Oyer of that Law you suggest I have broken, you evidence to the whole World your Resolution to sacrifice the Privileges of *Englishmen* to your sinister and arbitrary Designs.

Ld. Mayor. Take him away; turn him into the Bail-Dock.

Penn. Must I be taken away, because I plead for the Fundamental Laws of *England*? However, I leave it upon the Consciences of the Jury, who are my sole Judges, whether those antient Laws, that relate to Liberty and Property, and are not limited to particular Persuasions in matters of Religion, ought not to be indispensibly maintain'd; otherwise, who can say he has a Right to the Coat upon his Back? Our Liberties may be invaded, our Wives ravished, our Children made Slaves, our Families ruin'd, and our Estates carried off in Triumph by every sturdy Beggar, and malicious Informer.

Then he was carried away into the Bail-Dock.

Mead,

Demands, upon what Law the Indictment is grounded.

Sir Sa. Starling.

Penn abuses the Court, and is order'd to be carried away.

Mead's Defence.

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A Riot is,
where three or
more meet to-
gether to do an
unlawful Act,
and put their
Design in Exe-
cution.

Mead. You Men of the Jury, I stand here to answer an Indictment, which is a Bundle of Stuff full of Lies and Falshood: They charge me, that I met *Vi & Armis illicite & tumultuose*. Time was indeed, when I had Freedom to use a carnal Weapon, and then I thought I fear'd no Man, but now I fear the Living God, and dare not make use thereof, or hurt any Man; nor do I know I demean'd myself as a tumultuous Person; and therefore *William Penn* properly demanded Oyer of the Law on which the Indictment is founded. You Men of the Jury, tho' Mr. Recorder will not tell you what makes a Riot, a Rout, or an unlawful Assembly, *Coke* tells us, *A Riot is, where three or more are met together to beat a Man, to enter forcibly into his Land, or to cut down his Grass, Wood, Pales, &c.*

Rec. Or to do any other unlawful Act; but I thank you, Mr. *Mead*, for telling me what the Law is; [pulling off his Hat.]

Mead. Thou may'st put on thy Hat; I have never a Fee for thee now.

Ld. Mayor. You profess to be a meek Man, but deserve to have your Tongue cut out for affronting the Court.

Mead. Thou didst promise me I should be fairly heard: Why may not I have the Privilege of an *Englishman*? You may be ashamed of this Dealing.

Rec. You are an Enemy to the Laws of *England*, and do not deserve the Privileges others have.

Mead. The Lord judge between me and thee in this Matter.

Mead is carried into the Bail-Dock for abusing the Court. The Recorder directs the Jury in the Absence of the Prisoners, which they object was unlawful.

Then he was put into the Bail-Dock, and the Recorder directed the Jury:

Which while he was doing, *Penn* and *Mead* cry'd out from the Bail-Dock, That it was illegal to direct the Jury in the Absence of the Prisoner, and quoted *Coke's second Institution, on the Chapter of Magna Charta*.

Rec. Why you are present, you do hear, do you not?

Then the Prisoners cry'd out, They had several other Things to offer, and that they had been violently thrust into the Bail-Dock, and not suffer'd to make their Defence.

The

The Court order'd the Jury to go together, and after half an Hour eight of them came down, and the Court sent for the other four, and demanded if the Prisoners were Guilty.

The Foreman answer'd, that Penn was Guilty of speaking in Gracechurch-street.

The Jury give an imperfect Verdict;

Rec. You had as good say nothing.

Ld. Mayor. Was it not an unlawful Assembly? You mean, he was speaking to a Tumult of People there.

Foreman. That is all I have in Commission.

Rec. Go, and consider of it again.

After some time the Jury return'd into Court.

And are sent out again, Page 60.

Clerk. How say you, Is William Penn Guilty in Manner and Form; as he stands indicted?

Then the Foreman tender'd the following Paper to the Court, sign'd by all the Jury.

We, the Jurors hereafter named, do find William Penn to be Guilty of Speaking or Preaching to an Assembly met together in Gracechurch-street the 14th of August last, 1670. And that William Mead is not Guilty of the said Indictment.

They put their Verdict into Writing.

Some of the Bench were for accepting this Verdict; but the Evidence being as full against Mead, as against Penn, the Court refus'd it.

Ld. Mayor. You have heard that he preach'd; that he thereby created a Tumult; and that Mead abetted him; and they not only disobey'd the Martial; but the Civil Power.

Penn. We did not make the Tumult, but they that interrupted us. We were by Force and Arms kept out of our Lawful House; and met together in a peaceable manner as near to it, as the Soldiers would give us Leave.

The Court swore an Officer to keep the Jury without Meat, Drink, Fire or Candle, and adjourn'd till next Morning; when the Jury came into Court again.

The Court refuse it again, and adjourn till next Morning, when they give the same Verdict again.

Clerk. Is William Penn Guilty? &c.

Foreman. William Penn is Guilty of speaking in Gracechurch-street.

Ld. Mayor. To an unlawful Assembly.

Bushel. No, my Lord: We give no other Verdict than that we gave last Night.

They are threat-
ned by the
Court, and lock'd
up 'till the next
Morning, and
then they ac-
quit both the
Prisoners.

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Ld. Mayor. You are a factious Fellow, and a Course ought to be taken with you.

Rec. I will have a positive Verdict, or you shall starve for it.

Penn. Have they not found *William Mead* Not Guilty? Is not that a Verdict?

Rec. It cannot be a Verdict, because you were indicted of a Conspiracy; and one being found Not Guilty, and not the other, it cannot be a Verdict.

Penn. The Consent of the Jury is a Verdict; and if *William Mead* be Not Guilty, it follows that I am Clear; for I could not Conspire alone.

The Court adjourn'd 'till next Day, and directed the Jury to be kept as before: But when they return'd into Court the next Morning, they gave a Verdict, That the Prisoners were Neither of them Guilty.

The Jurors are
fin'd for going
contrary to Evi-
dence, and sent
to *Newgate* with
the Prisoners.

Whereupon the Court set a Fine of forty Marks upon the Head of every one of the Jury, and order'd them to be imprison'd till paid, for going contrary to plain Evidence.

Penn. I demand my Liberty, being acquitted by the Jury.

Ld. Mayor. No: You are in for your Fines, and Contempt of the Court.

Then the Jury, as well as the Prisoners, were commanded to be carried to *Newgate*, and the Court arose.

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The Case of ANTHONY, Earl of Shaftsbury; as it was Argued at the King's Bench Bar, the 27th and 29th of June, Trin. 29. Car. 2. 1677.

THE Earl was brought to the Bar on *Wednesday* the 27th of *June*, on the Return of an *Alias Habeas Corpus*, directed to the Constable of the Tower; the Effect of which Return was, "That the said *Anthony, Earl of Shaftsbury*, was committed to the Tower the 16th of *February*, 1676, by an Order of the House of Lords, for High Contempts committed against that House; and to remain in Custody

The Commit-
ment for Con-
tempt in general.

" Custody during his Majesty's Pleasure, and the
" Pleasure of that House."

The Return was fil'd on the Motion of the Earl's Council, and they were order'd to attend the Judges and the Attorney-General with their Exceptions to the Return; and then the Earl was remanded.

On Friday the 29th, the Earl was brought into Court again, and Mr. Williams of Council with the Earl argued, That the Cause of Commitment, which was return'd, was insufficient: He said, it could not be denied, but such a Commitment by any other Court would be deem'd too general, and uncertain; *Morr*, 893. *Vaughan*, 140. and 1 *Rolls* 218. And that the Commitment of the Jurors, for acquitting *Penn* and *Mead*, *contra plenam & manifestam Evidentiam*, was resolv'd to be too general; for that the Evidence ought to have appear'd as certainly to the Judge of the Return, as it appear'd before the Judge authoris'd to commit. And that the Commitment being by the House of Peers made no Difference; for let the Question be of what Nature it will, that Court was oblig'd to declare the Law without Distinction, whether the Question begun in Parliament, or elsewhere: And that this Court often determin'd, even concerning the Privilege of Parliament, *Dyer* 60. 4 *Ed.* 3. And had determin'd what should be deem'd a Session of Parliament, 1 *Rolls* 29. That if the Parliament were dissolv'd, there was no Question but the Prisoner should be discharg'd of a *Habeas Corpus*, and yet then the Court must examine the Cause of Commitment, and consequently might examine a Matter Parliamentary; and that if the Court could not take Cognizance of the Matter now, the Party was without Remedy for his Liberty — That the Limitation of the Imprisonment during the King's Pleasure, and the Pleasure of the House, was illegal, as a Commitment, until he should have been discharg'd by the King's-Bench and Common-Pleas, would have been illegal, because the Prisoner could not apply himself in such a manner, as to obtain his Discharge. If a Man be committed 'till further Order, according to *Coke* he isailable presently; because that imports he shall be deliver'd by due Course of Law, and that if this Commit-

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And therefore
his Councilurg'd
it was illegal.

Page 65.
And that it be-
ing by the House
of Peers made
no Difference.

And that the
Court of King's
Bench might
examine Parlia-
mentary Mat-
ters.
That a Com-
mitment, during
the Pleasure of
two Jurisdictions
was illegal.

That one com-
mitted till fur-
ther Order is
ailable.

And that the Pleasure of the King is to be determin'd in his Courts.

ment was not to be so interpreted, it was illegal; for the Pleasure of the King is to be determin'd according to Law in his Courts.

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That no Freeman ought to be committed, unless the Cause of Commitment were set forth.

Mr. Wallop argued, That if this Court might not meddle where a Person was committed by the Peers, then they might subject a Man to perpetual Imprisonment at their Pleasure: But he said, the Law was otherwise; for tho' the House of Lords was the supreme Court, yet their Jurisdiction was limited by Common and Statute Law: And that it was a Solecism, that a Man should be imprison'd by a limited Jurisdiction, and yet it should not be examinable, whether the Cause were within their Jurisdiction, or not: That at a Conference held between the Lords and Commons, 3 April. 4 Car. It was agreed, that no Freeman ought to be committed by the King, or Privy Council, or any other, (in which the House of Peers are included) unless some Cause of the Commitment or Restraint were set forth, for which by Law the Party ought to be committed; and so the Law was declar'd in the Petition of Right.

That this Court might discharge a Prisoner illegally committed by the Lords.

Mr. Smith argued for the Prisoner; That where a Subject was restrain'd of his Liberty, this was the proper Court for him to apply to; and that this Court had a supreme Power, as to this purpose, over all Courts; and on a *Habeas Corpus* issuing hence, the King ought to have an Account of his Subject, *Rolls. Tit. Hab. Corp. 64. Witherly's Case*: And that if a Commitment by the House of Lords was illegal, this Court was oblig'd to discharge the Prisoner, as well as if he had been illegally imprison'd by any other Court: That if the Judges might judge of an Act of Parliament, *a fortiori* they might judge of an Order of the Lords. *Butcher's Case*. That it was resolv'd in the Earl of Clarendon's Case in 1663, That if the Imprisonment was not lawful, the Court could not remand him to a wrongful Imprisonment, *Vaughan 156*. That it did not appear, whether the Contempt he was committed for was a voluntary Act, or an Inadvertency, and his Lordship had suffer'd five Months Imprisonment already: And that it was false Imprisonment not only where the Commitment was unjust, but where it was of too long Duration;

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Duration ; 2 *Inst.* 53. And as the Law was now taken to be, the King might adjourn the Parliament for ten or twenty Years, and make the Imprisonment perpetual ; but this he said upon a Supposition the Session had still a Continuance ; for he conceiv'd, that where the King had given the Royal Assent to any Bills, the Session was determin'd ; and concluded, that the Order was determin'd with the Session, and the Earl ought to be discharg'd.

That the Session was concluded by the King's passing an Act, and then the Earl ought to be discharg'd.

Mr. *Ayres* being of Council for the Earl also added, That if the Lords should commit a Minister of State, whose Advice was necessary to the King and the Realm, it could not be imagin'd, that the King should be without Remedy for his Subject, but that he might have him discharg'd by his Writ out of this Court : And that this was not an ordinary Adjournment, but it was entred on their Journal, that they should not meet at the Day of Adjournment, but be adjourn'd, or prorogu'd to another Day, if the King did not signify his Pleasure by Proclamation.

That if a Prisoner could not be bail'd, the King might lose the Service of any of his Ministers.

Serj. Maynard argued to maintain the Return, and said, He confess'd if this Commitment had been by any inferiour Court, it could not have been maintain'd ; but being by a Court, that was not under the Controul of this Court, and that Court sitting at this time, it was otherwise — That indeed, where a Question of Privilege arises in an Action depending in this Court, the Court might determine it, but they could not judge of a Contempt committed in Parliament, and discharge one committed for such Contempt, during the same Session of Parliament ; and that as to the Determination of the Imprisonment, the Pleasure of the King was to be determin'd in the same Court, where the Judgment was given.

Serj. Maynard, contra.

That the House of Lords could not be controul'd by this Court, while they were sitting ; as they were now deem'd to be.

And that the King's Pleasure must be determin'd in the Court, where the Commitment was.

Sir William Jones, Attorney-General, argued to the same Effect with the Serjeant, and said, That this Case differ'd from all others in two Circumstances ; 1. The Person was a Member of the House, by which he was committed ; and 2. That that Court being superior to this, altho' the Contempt had been particularly express'd, and of what Opinion soever this Court had been, as to the Nature

Mr. Attorney to the same effect.

Page 66.
Admits the Court might judge of Privilege, where it was incident to a Suit the Court was possess'd of, but not of a Matter arising originally in Parliament.

The Court cannot bail, where they have not the Jurisdiction of the Cause.

That the King might pardon the Contempt, which was the proper way of determining his Pleasure.

Mr. Sol. on the same side shews, that if this Court might determine things cognizable in Parliament, there might be inconsistent Judgments.

of it, they could not have discharg'd the Earl, and taken upon them a Jurisdiction over the House of Peers — Indeed, if a Writ be brought, where Privilege is pleaded, the Court ought to judge of it, as an Incident to the Suit whereof the Court was possess'd, but that was no Warrant for them to assume a Judgment of an Original Matter arising in Parliament, tho' that which had been said of the Judges Power to expound Statutes could not be denied — That if this Court did any thing in it, they must either discharge, or remand him; for they could not bail, but where they have a Jurisdiction of the Matter; and if they discharg'd him, they would deliver him out of the Hands of the House of Lords, who only had Power to punish him, and so there would be a Failure of Justice for Offences committed in Parliament: And whereas it had been urg'd, that this Contempt might possibly be committed before the General Pardon, such Injustice could not be suppos'd in the Supreme Court, but it might well be suppos'd to be committed in the Session in which the Commitment to Prison was: That the Words, *during Pleasure*, were no more than what the Law would have supplied; and if they had been omitted, the King might have pardon'd the Contempt: And if a Judgment be given in this Court, that one be imprison'd during the King's Pleasure, his Pleasure ought to be determin'd by a Pardon, and not by any Act of this Court; so that the King could receive no Prejudice by the imprisoning a Great Minister, because he might discharge him by a Pardon: And that the double Limitation was for the Benefit of the Prisoner, and he ought not to complain of the Duration of the Imprisonment, since he had neglected to apply for his Discharge in an orderly Way.

The Solicitor-General (*Turner*) argued on the same side, and said, That this Court, during the Session, could not take Cognizance of the Matter, and it would be inconvenient, if they might; for then this Court might judge one way, and the House of Peers another, which would not be for the Benefit of the Subject: And that it had been agreed by the whole Court, in the Case of *Bernardiston*

diston and *Somes*, that an Action for a double Return could not be brought in this Court, till the Parliament had determin'd the Right of Election, lest there should be a Difference in the Judgments of the Courts; and that when a Judgment of the Lords comes to this Court, they are oblig'd to execute it, and never could examine, or correct their Judgments: And that tho' Imprisonments for Contempts have been frequent by the one and the other House, no Person ever before sought his Enlargement here: That the Court was oblig'd to grant the *Habeas Corpus*, but it appearing upon the Return, that the Cause belong'd *ad aliud Examen*, they ought to remand the Party.

That it was unprecedented to apply to this Court for Enlargement on a Commitment by Parliament.

Then my Lord *Shaftsbury* made a Speech himself, wherein he repeated some of the Arguments his Council had us'd; and concluded, that notwithstanding what Mr. Attorney had advanced, *viz. That the Court must either discharge, or remand him*, he hop'd, he might be admitted to Bail, and that he had such Bail in Court, as could not be objected to.

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The Earl makes a Speech, and desires he may be bail'd.

Mr. Justice *Jones* deliver'd his Opinion *seriatim*: That such a Commitment by another Court would have been ill, but said, that those Cases where the Courts of *Westminster* had taken Cognizance of Privilege of Parliament were only when it was an Incident to the Case before them, which was of their Cognizance; but the direct Point now before them was the Judgment of the Lords: And that this Court could not judge of any Law, Custom, or Usage of Parliament: And as to the Continuance of the Imprisonment, the King might pardon the Contempt under the Great-Seal, or discharge the Imprisonment under his Privy-Seal: That he should not say what might have been done, if the Session had been determin'd; but as the Case was, the Court could neither bail, or discharge the Earl.

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Mr. J. Jones deliver'd his Opinion, that tho' the Commitment was ill, it could not be examin'd here, and that the E. could not be bail'd, or discharg'd.

Mr. Justice *Wild* was of Opinion the Return was illegal, but that they could not examine it here, or meddle with the Transactions of the House of Peers, during the Session, which was not determin'd; and therefore the Certainty or Uncertainty of the Return was not material: But if the Sessions

Mr. J. Wild of the same Opinion.

had been determin'd, his Opinion would have been, that the Earl ought to be discharg'd.

As was Sir R.
Rainsford, Ld.
Ch. Justice.

Sir Richard Rainsford said, This Commitment was in Execution of the Judgment given by the Lords for the Contempt, and that if he should be bail'd, he would be deliyer'd out of Execution : And that for a Contempt in *Facie Curie* there was no other Judgment, or Execution.

And Mr. J.
Twisden, but
none of them
declar'd what
their Opinions
were, in case the
Session had been
concluded, but
Mr. J. Wild,
who said in that
Case the Earl
ought to have
been discharg'd.

That this Court had no Jurisdiction as the Case stood, and therefore he ought to be remanded ; but whether it would have been otherwise in Case of a Prorogation, he would deliver no Opinion.

Mr. Justice Twisden being absent, Mr. Just. Jones said, he had desir'd him to declare his Opinion ; which was, That the Earl ought to be remanded.

And the Earl was remanded by the Court.

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The Tryal of ROBERT GREEN, HENRY BERRY, and LAURENCE HILL, at the King's-Bench Bar for the Murder of Sir Edmund-bury Godfrey, February, 30 Car. II. 1678.

ON Wednesday, the 5th of February, they were brought from Newgate to the King's-Bench Bar to be Arraign'd.

The Indictment
for the Murder
of Sir Ed.
Godfrey.

The Indictment set forth, " That Robert Green, late of the Parish of St. Mary-le-Strand, in the County of Middlesex, and Henry Berry of the same Parish and County, Labourer, and Laurence Hill, late of the same Parish and County, Labourer, together with ----- Girald, of the same Parish and County, Clerk, Dominick Kelly, of the same Parish and County, Clerk, and Philibert Vernatt, of the same Parish and County, Labourer, (the three last being withdrawn) upon the twelfth Day of October, in the thirtieth Year of King Charles II. at the said Parish of St. Mary-le-Strand, in the County of Middlesex aforesaid, did Feloniously, Wilfully, and of their Malice aforethought, make an Assault upon the Person of Sir Edmund-

Page 215.

" bury

"bury Godfrey, Knight : And that the aforeſaid Robert Green, a certain Linnen Handkerchief of the Value of Sixpence (being twiſted) did put about the Neck of the ſaid Sir Edmund-bury Godfrey, and therewith choak and ſtrangle him ; whereof he inſtantly died : And that the ſaid Berry, Hill, Girald, Kelly and Vernatt, were then and there preſent, Aiding, Aſſiſting, Comforting, and Abetting the ſaid Robert Green : And ſo the Priſoners at the Bar, with the ſaid other Perſons, did kill and murder the ſaid Sir Edmund-bury Godfrey againſt the King's Peace, his Crown and Dignity, &c." To which Indiſtment the ſaid Green, Berry, and Hill, reſpectively pleaded Not Guilty.

On Monday, February 10. 1678, the Priſoners were brought to the King's-Bench Bar, in order to their Tryal. And a Jury being ſworn and charg'd with the Priſoners, and Proclamation made for Evidence to come in as uſual, Sir Thomas Stringer, Serjeant at Law, open'd the Indiſtment ; and his Maſteſty's Attorney-General, Sir William Jones, ſhew'd the Nature and Courſe of the Evidence.

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Sir Wm. Jones,
Att. Gen.

Then the Witneſſes were call'd ; and firſt

Mr. Oates.

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Mr. Sol. (Sir Francis Winnington.) Pray give the Court an Account of what Tranſactions there were between you and Sir Edmund-bury Godfrey.

Sir Fr. Winnington,
Sol. Gen.

Mr. Attor. We call this Gentleman to prove what Examinations Sir Edmund-bury Godfrey had taken, and what was his Opinion of himſelf about them.

L. C. J. I ſuppoſe you make uſe of it to ſhew, that that might be an Inducement to theſe Perſons to commit this Fact, becauſe he was forward in the Diſcovery of their Plot. Come, Mr. Oates, pray tell your Knowledge.

Sir W. Scroggs,
L. Ch. Juſtice.

Mr. Oates. Upon the fixth of September laſt I went before Sir E. Godfrey, and gave in ſeveral Depoſitions upon Oath, and then took them home with me. Upon the 28th of September, having taken two or three Copies of this Record, we went before Sir E. Godfrey again, and ſwore all the Copies we had made : After this I made known the Buſineſs to the Council, and on Monday (I think it was the 30th of September) Sir E. Godfrey came to me, and told

Oates's Evidence
of the danger
Sir Ed. Godfrey
thought himſelf
in from the
Papists.

The TRYAL of

told me what Affronts he had receiv'd from some Great Persons, for being so zealous in this Business; and that others, who desir'd to have the Discovery made, thought he was too remiss in the Prosecution, and threaten'd to complain to the Parliament of him, which was to meet *O^{ct}ob. 21.* following— And the Week before Sir *Edmund* was missing, he told me several Popish Lords, some of whom are now in the Tower, had threaten'd him, and ask'd him, what he had to do with it: That he went in fear of his Life by the Popish Party, and observ'd he had been dog'd several Days, but that he should not fear them, if they came fairly to work.

Tho. Robinson, Esq; Chief Prothonotary of the Common-Pleas, was sworn.

Mr. Recorder. Pray acquaint the Court what Apprehensions Sir *Ed. Godfrey* had concerning this Business.

Prothonotary
Robinson to the
same Effect.

Mr. Robinson. Sir *E. Godfrey* and I have been Acquaintance these forty Years, and we have been in Commission of the Peace together, for this City and County, a considerable time: And meeting with him at the Quarter-Sessions for *Westminster*, on Monday the seventh of *O^{ct}ober*, after the Court was up, we went to Dinner with the High-Bailiff, where we discoursed about the Plot; and I said to Sir *Ed. Godfrey*, I hear you have taken several Examinations about this Plot, that is now made publick; and he answer'd, he would fain have had others done it, and he thought he should have little Thanks for his Pains; and discoursing further, he said, *Upon my Conscience I shall be the first Martyr*; but he said he did not fear them, if they came fairly, he should not part with his Life tamely: I told him he would do well to have his Man go with him, and I observ'd he never went with one; but he said he did not like it, it was a Clog to a Man.

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Mr. Praunce was sworn.

L. C. J. Pray tell us the first Motives that induc'd you to do this Thing.

Praunce's Evidence of his part
in the Murder.

Praunce. My Lord, about a Fortnight before Sir *Edmund* was murder'd, I was at the *Plow* Alehouse with *Mr. Girald*, *Mr. Green*, and *Mr. Kelly*; and *Mr. Girald* and *Mr. Kelly*, who are Priests, entic'd me, and

and told me it was no Sin to murder him, but a charitable Act, for he was a buſie Man, and had done, and would do a great deal of Miſchief: And they ſaid the ſame by the Water-ſide, and I heard *Girald*, *Kelly*, and *Green* ſay, that they had dog'd him into *Red-Lion* Fields, and had not an Opportunity of doing it there.

Mr. Attorney. What Diſcourſe had they at the Plow?

Praunce. There they reſolv'd, that the firſt that could meet him ſhould give notice to the reſt to be ready.

Mr. Attorney. Do you know of any ſending to his Houſe, or going to it?

Praunce. Yes. *Hill* or *Green* (one or both of them) told me, they did go to his Houſe on the *Saturday* Morning, about nine or ten a Clock, to ask for him; and the Maid telling them he was not up, they went out, and ſtaid for his coming out, and dog'd him up and down that Day, till they dog'd him into *St. Clements*; and about ſeven of the Clock *Green* came to me to my Houſe in *Princes-ſtreet*, and gave me notice he was at *St. Clements*, and *Girald* and *Kelly* were watching him; whereupon I came to *Somerſet-Houſe* as faſt as I could, and about eight or nine of the Clock *Hill* came before up the Street, and gave us notice we muſt be ready: Then he went up to the Gate, and ſtood there till *Sir Ed. Godfrey* came by, and then told him there were two Men quarrelling, and deſir'd him to come down, and try if he could part them. He was very unwilling; but pray Sir, ſaid *Hill*, you being a Juſtice of Peace may qualify them; ſo he went down as far as the bottom of the Rails, and there *Green* twiſted his Handkerchief, and threw it about his Neck, and threw him behind the Rails, and there choak'd him; and *Girald* would have run his Sword thro' him, but the others would not ſuffer him, for fear the Blood ſhould diſcover them: About a Quarter of an Hour after I came down, and found he was not quite dead, for I laid my Hand on his Legs, and they ſhook; then *Green* wrung his Neck quite round, and punch'd him with his Knee, as he boaſteth afterwards.

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The TRYAL of

L. C. J. Where was you when the Handkerchief was twitted about his Neck ?

Praunce. Hill order'd me to stand at the Water-Gate.

Mr. Serj. *Stringer.* You watch'd the Water-Gate : Who watch'd the Stairs ?

Praunce. That was *Berry*.

Mr. *Att.* Who were about the Body, when you came from the Gate ?

Praunce. There were *Hill*, *Green*, *Girald*, and *Kelly*; and a while after *Berry* came, and help'd to carry him into the House, as we did all, and *Hill* went before, and opened the Door; and we carried him into *Hill's* Room in Dr. *Goodwin's* House, where the Body lay 'till Monday Night, and then it was remov'd into *Somerset-House*, and *Hill* shew'd it me with a dark Lanthorn; *Girald*, *Hill* and *Kelly*, and all were there, and something was thrown over him.

Mr. *Just. Wild.* Is not *Hill's* Chamber in *Somerset-House* ?

Mr. Serj. *Stringer.* Describe the Room, Mr. *Praunce*, as well as you can.

Praunce. I am not certain of the Room, and so cannot describe it: *Hill's* Chamber is in the lower Part of the House in a Court— On Tuesday Night it was carried to *Hill's* Chamber again, but some body being there, they could not carry it in, but went with it to the Chamber over-against it, I think they were Sir *John Arundell's* Lodgings: There it lay till Wednesday Night; and about nine that Night they were removing it to the Room where it first lay, and I happening to come by, as they were removing it, they were frightened, and run away; but I spoke, and *Berry* came back again, and got the Body up into the Room, and about twelve it was carried away in a Sedan; *Hill* put him in, and *Girald* and I carried him through the Great Gate of the upper Court; one of us hem'd; and *Berry* open'd the Gate for us, and *Green* and *Kelly* went before, till we came to *Covent-Garden*; then *Green* and *Kelly* took him, and carried him to *Long-Acre*, and from thence we took him, and carried him to *Soho Church*, and there *Hill* met us with a Horse, and we help'd the

the Body up, and set it astride, and *Hill* rid behind him, and held him up, and we set the Sedan in a new House till we came back.

L. C. J. Who did go with him?

Praunce. *Green, Hill, Girald* and *Kelly*; and the next Morning I met *Hill, Girald* and *Kelly*, and they told me they had run him thro' with his own Sword, and thrown him into a Ditch, and laid his Gloves and other things upon the Bank.

Mr. Attorn. Now tell the Story of your meeting at *Bow*.

Praunce. The Friday after the Proclamation, that all Papiſts should be gone out of Town, *Mr. Vernatt, Mr. Girald, Mr. Luſon* a Priest, and one *Dethick* and myself, din'd at one *Casbe's* at the *Queen's Head* in *Bow*, and there they all read the Writing of the Murder, and were very merry; (*Mr. Vernatt* should have been one at the doing it, but something happen'd he could not.) And one of the Drawers came and listen'd at the Door, and hearing something, I went to the Door, and catch'd him listening, and said, Sirrah, I could find in my Heart to kick you down Stairs, and away he went.

Mr. Juſt. Jones. Was it agreed at the *Plow*, that *Sir Edmund* should be kill'd?

Praunce. It was agreed there; and the first that met him was to give notice to the rest.

Mr. Juſt. Dolben. Were there not two Meetings at the *Plow*?

Praunce. Yes; *Hill* was not at the first Meeting, but at the last he was.

Mr. Attorn. Was there any Reward propos'd by the Priests for the doing it?

Praunce. *Girald* and *Vernatt* did speak of a great Reward from my Lord *Bellaſis*.

Mr. Juſt. Dolben. At your Meetings did you resolve upon the way of doing it?

Praunce. *Girald* resolv'd to kill him that Night, and if he could not find a more convenient Place, he would kill him with his own Sword in the Street that leads to his own House.

Mr. Recorder. The Priest, rather than fail, was resolv'd to do that Act of Charity himself.

Mr.

The TRYAL of

Mr. *Attorn.* Do you know Mr. *Bedlow* ?

Praunce. I never was in his Company till I was committed to Prison.

Hill. *Praunce* is not a lawful Witness, for he is perjur'd by his own Confession.

L. C. J. He accus'd you upon Oath, and then he made a Confession, that what he had sworn was not true ; but that Confession was not upon Oath, how then is he guilty of Perjury ?

Hill. If a Man swear a thing, and after deny it, he is certainly perjur'd.

Mr. *Attorn.* We shall call Capt. *Richardson* to give an Account of this Matter.

L. C. J. Mr. *Richardson*, were you by, when Mr. *Praunce* denied all that he had confess'd ?

Richardson's
Evidence of
Praunce's deny-
ing what he had
sworn.

Page 223.
And then af-
firming it again.

Capt. *Richardson.* On the Sunday Night, before the Prorogation of the last Parliament, I receiv'd a Letter from one of the Lords of the Council to bring up Mr. *Praunce* to be examin'd. When we came thither, Mr. *Praunce* was disturb'd, and desir'd to speak with the King, and I carried him into the King's Closet, where he fell down on his Knees, and said, *he was innocent, and they were all innocent* ; and he said the same thing before the Council : The Lords ask'd him, if any body had been tampering with him, and he said, No : But as soon as I came home, he beg'd of me for God's sake to go back again with him to the King, to acquaint him, that all he had but now said *was false*, and what he had sworn before *was Truth* ; and he said, it was his Fears that made him recant, and out of an Apprehension that his Life was not secure ; for he said, if he had his Pardon, he should lose his Trade, and be in Danger of being murder'd by the Roman Catholicks.

Mr. *Just. Jones.* Mr. *Praunce*, you are upon your Oath now, is this all true that he has said ?

Praunce. Yes, my Lord, it is.

Mr. *Attorn.* Did he ever express any Abhorrence of the Practice of that Church ?

Capt. *Richardson.* Yes, my Lord, he did.

Mr. *Attorn.* I hope it will make all People abhor and forsake them in time, if these Practices be true : We will now call Mr. *Bedlow*, who, tho' he was not present at the Murder, saw the Body in *Somerset*-
House,

House, after it was dead, and will give some Circumstances, which will very much corroborate Mr. Praunce's Testimony.

Mr. Bedlow was sworn.

Mr. Attorn. What Conference had you with any Persons, Priests, or Jesuits, about murdering any one?

Bedlow. I have been treated with several times, not only about the Plot, but about murdering a Gentleman: *Le Faire*, and *Pritchard*, and *Kaines*, and several other Priests discours'd with me about it the Beginning of last *October*, or the latter End of *September*, and said they would find some to assist me, and I should have a considerable Reward, but they never told me who it was that was to be murder'd; indeed they directed me to insinuate myself into the Acquaintance of *Sir Ed. Godfrey*, and I went six or seven Days to his House, on pretence of getting Warrants, for their good Behaviour, against Persons whose Names I feign'd, and got pretty much into his Acquaintance: And the very Day before he was murder'd, I was at the *Greyhound* Tavern with these Priests, and they desir'd me to fetch him thither, that they might be acquainted with him; and I sent my Boy to see if he was at home, but he brought me Word, he was not: The next Morning I met *Le Faire*, and went to the *Palsgraves-Head* Tavern with him, where he told me, there was a very material Man to be put out of the Way that Night; one, who had all the Informations that Mr. Oates and Dr. Tongue had given in: That they had made several Attempts on him, but they had fail'd, and if he should not be taken out of the Way, and the Papers taken from him, the Business would be so obstructed, that they must wait till another Age before they could effect their Design. I said I would assist in it, as I had promis'd, but ask'd where the 4000 *l.* was, that had been promis'd as a Reward; and he told me my Lord *Bellasis* was engag'd for it, and Mr. *Coleman* had Orders to pay it.

Bedlow's Evidence of his being solicited by the Priests to murder a Gentleman.

Page 224.

L. C. J. Let us know, when you first knew it to be *Sir E. Godfrey*.

Bedlow.

Bedlow. I was to meet *Le Faire* again that Night in *Somerſet-Houſe Cloyſters*; but knowing their Deſign was to murder ſome body, I would not come; but on *Monday*, about nine at Night I met him in the *Cloyſters*, and he reprov'd me that I did not come according to my Promiſe, and aſſiſt in the Buſineſs; but ſaid, if I would help to carry him off, I ſhould have half the Reward: I aſk'd to ſee him, and he led me into a Room through a dark Entry, where were four or five People; they had a ſmall Light in a Lanthorn, and did not open it, till I had had a Turn about the Room; and one threw off the thing that lay upon the Body, and I went and look'd upon him, and knew him; he had ſuch a Cravat about his Neck as I have; but the Jeſuits who were there were not the ſame who had employ'd me to inſinuate myſelf into his Acquaintance, and ſo they thought I had not known him: I adviſed them to tie Weights to his Head and Feet, and ſink him in the River; but they ſaid, No, we will put it upon himſelf, there are none but Friends concern'd; and they ſaid they had ſtrangled him, but how I did not know: When they preſs'd me to help carry him out, I ſaid it was too early, and about eleven a Clock would be a better time. *Le Faire* ſaid to me, Upon the Sacrament you took on *Thursday* you will be at the carrying off of this Man at Night: I promiſ'd him I would, but went away very unſatisfied, having ſo great a Charge upon me as the Sacrament of the Altar, which, after the Diſcovery of the Plot, was adminiſtered to me twice a Week to conceal it, and I could not tell how to diſcover: Then I went to *Briſtol*, and was very reſtleſs and diſturb'd, knowing ſome Murders had been already committed, and greater intended, and I was at laſt convinc'd, and could no longer forbear the Diſcovery, ſo I wrote to the Secretary, and gave in my Information to the Parliament—*Mr. Praunce* being taken up on Suſpicion, and in the Conſtable's Hands, *Mr. Oates* came by and deſir'd to ſee him, and ſoon after I came in, and knew him to be one of thoſe I had ſeen with the Body, and then I went to the Houſe of Lords, and made out my Charge againſt him.

L. C. J.

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L. C. J. Was the dark Lanthorn at Mr. Hill's Lodging, or at the other Place, Mr. Praunce?

Praunce. At the other Place,

L. C. J. What time did you see the Body there?

Praunce. About nine or ten a Clock.

L. C. J. What time did you see him there, Mr. Bedlow?

Bedlow. It was after nine, my Lord.

L. C. J. Was there no Centinel set at Somerset-House on the Saturday, Monday, or Wednesday Nights?

Praunce. My Lord, I took notice of none; if there were any, they were at Berry's House, and he open'd the Gate, when we carried out the Sedan.

Brown, the Constable, sworn.

Mr. Recorder. Pray, in what Posture did you find Sir E. Godfrey?

Brown. I found him in a Ditch, with his Sword run through him, and the end of it was two hands thro' his Back; there was no Blood in the Ditch, nor none follow'd when the Sword was taken out: They had run it into another Place, but that was against a Rib, and so it could not go thro', but there was no Blood there: His Breast look'd black, and I suppose his Neck was broke, for it was so weak, one might turn his Head from one Shoulder to the other; his Stick and Gloves lay by him on the Bank, and he had a great deal of Gold and Silver in his Pockets.

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Brown's Evidence how the Corps was found.

Mr. Skillard, the Surgeon, was sworn.

Mr. Attorn. Pray, inform the Court, when you saw the Body of Sir E. Godfrey.

The Surgeon's Evidence, who view'd the Corps.

Skillard. Upon Friday about twelve of the Clock, the Day after the Body was found, I view'd it; his Breast had been beaten, and his Neck was distorted; you might have taken the Chin, and set it upon either Shoulder: He had one Wound, that stop'd at a Rib, and another went thro' his Heart, and so thro' the Body.

Mr. Attorn. Was he kill'd by that Wound?

Skillard. I don't think he was, because there was no Evacuation of Blood; and besides, his Bosom was open, and he had a Flannel Waistcoat and a Shirt on, and neither these, or any of his Cloaths, were penetrated.

The TRYAL of

Mr. *Attorn.* How long do you think he was dead, before you saw him ?

Skillard. I believe, four or five Days ; and they might have kept him a Week ; for itrangled People never swell : When we rip'd him up, the Liquor in his Body smell'd a little ; and the lean Flesh was so near Putrefaction, that it stuck to the Instrument, when we cut it.

Mr. *Cambridge*, another Surgeon, was sworn.

Mr. *Recorder.* When did you see the Body ?

Cambridge. Upon the *Friday* ; and I found his Neck dislocated, and his Breast beaten and bruise'd, and two Punctures under his left Pap ; one went against a Rib, and the other quite thro' his Body, and I believe they were given him after his Death.

Eliz. Curtis, Sir *Ed. Godfrey's* Maid, was call'd.

Evidence of
Green's enquir-
ing for Sir *Ed.*
Godfrey the Day
before he was
missing, and
Hill the same
Day.

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She depos'd, That the *Friday* before her Master was missing, *Green* enquir'd for him, about nine or ten in the Morning, and when Sir *Edmund* came to him, *Green* bid him Good-Morrow, and afterwards spoke to him in *French* ; and that he was about a Quarter of an Hour with him — That *Hill* the Prisoner was with her Master on the *Saturday* Morning, and staid with him a considerable time in the Parlour ; and that he had the same Cloaths he appear'd in at the Bar.

L. C. J. Have you ever shifted your Cloaths ?

Hill. No, indeed ; I have not.

Eliz. Curtis. On the Night before my Master was missing, a Man brought him a Note, and I carried it in, and told my Master he staid for an Answer ; and my Master said, prithee tell him I don't know what to make of it ; but I cannot say, it was any of the Prisoners who brought that Note.

Lancelot Stringer was sworn.

Evidence of
their meeting at
the *Plow-Ale-*
house.

Page 228.

He depos'd, That he was Servant at the *Plow-Alehouse* ; and that he had seen Mr. *Praunce* there several times in Company with *Green* and *Hill*, Mr. *Fitz-Gerald* and *Kelly*.

Mr. *Vincent* was sworn.

He depos'd, That he had seen the Prisoners in Company with Mr. *Praunce* at his House [the *Plow-Alehouse*] and that he had seen *Girald* and *Kelly* at his House.

Richard

Richard Cary was sworn.

He depos'd; That three Gentlemen came to the Queen's Head at Bow, and they sent the Deponent with a Letter to Poplar to *George Desbick* Esq; That he deliver'd the Letter, and *Mr. Desbick* told him he would be there presently, and he brought this Answer to the Gentlemen, who gave him a Glass of Wine, and paid him Sixpence for going.

Mr. Recorder. Was *Mr. Praunce* one of them?

Cary. He looks like one of them.

Mr. Recorder. Was this the Man you sent *Mr. Praunce*?

Praunce. Yes; this was the Man.

William Evans, Drawer at the Queen's Head, was sworn.

Mr. Recorder. Do you remember a Company that was at your Master's two or three Months ago?

Evans. I remember a Company that was there, and *Mr. Desbick* came to them, and they had a Barrel of Oysters and Flounders for Dinner; and they pull'd out a Paper, and read it, and named *Sir Ed. Godfrey's* Name: And while I was at the Door, one of them came and threaten'd to kick me down Stairs.

Sir Robert Southwell was sworn.

Mr. Recorder. Pray, Sir, tell your Knowledge of *Praunce's* Examination.

Sir Rob. Southwell. On the 24th of December *Mr. Praunce* gave a general Account of Things to the Council concerning this Murder; which relating to this Bench, and that Room, &c. it was not understood by the Board: Whereupon the King appointed the Duke of Monmouth, the Earl of Ossory, and *Mr. Vice-Chamberlain* to the Queen, to go to Somerset-House, and take the Examination upon the Place; and I, being a Clerk of the Council, did wait upon these Lords. And *Mr. Praunce* shew'd them first the Bench where they were sitting when *Sir Ed. Godfrey* was coming down, then the Corner into which they drew him when they had strangled him; then the Place where *Berry* went to stay, which was at the Stairs that lead to the upper Court; then a little Door at the end of the Stables, which led up a Pair of Stairs, and at the Head of the Stairs

Sir Rob. Southwell relates the Evidence *Praunce* gave before the Council, and that he shew'd the Committee the Places where the Body was laid.

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a long dark Entry, and at the Top of those Stairs a Door on the left Hand, which being opened, shew'd us eight Steps, which led up to the Lodgings that were Dr. *Godwin's*, in which *Hill* was said to be Inhabitant for seven Years before; and as soon as we were gone two Steps, there was a little Closet on the Right-hand, in which there was a Bed; and there he told the Lords was the Place they handed the Corps up first, and there they left it two Nights in the Care of *Hill*: And this Account was agreeable to what he had declar'd before the Council in the Morning; but what he says now of Sir *John Arundel's* Chambers, that cannot be, for those Lodgings are not capable of receiving a Person of Sir *John's* Quality.

Mr. Attorn. When Mr. *Praunce* shew'd these Places, did he do it readily, or with Hesitancy?

Sir Rob. Southwell. Hitherto he went directly and positively; but when the Lords enquir'd whither the Body was carried afterwards, he said it was into some Room of the House by the Garden, and he undertook to lead them to the Place as well as he could, and went through the long dark Entry that leads into the outer Court of the Great House; and crossing the Quadrangle he led us to the Piazza, and down a pair of Stairs; so far he was positive; but after we were down Stairs, there was a great square Court, then he began to stagger; however on he went cross the Court, and through several Rooms, 'till we came up Stairs again, and so into several other Rooms; then he said, sure we were here, but I can't tell; and was in Distraction which Room he saw the Body in, but said, thus far he was sure he was right.

L. C. J. His Doubtfulness of the Room gives Credit to his Testimony.

Mr. Recorder. Did not *Hill* at his Examination say he knew *Girald*, but deny he knew *Kelly*?

Sir Rob. Southwell. He denied he knew *Kelly*, but said he knew *Girald*.

Hill. I said I knew one *Girald*, but not that *Girald*; he that I knew was no Priest.

L. C. J. This way of answering is like the Examination that was taken lately; where one of them being

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being ask'd, if he knew such a Priest, he denied he had seen him in fourteen Days ; but when one came and prov'd to his Face, he had been in his Company all Night within a Week ; I, says he, that's true, but I said I had not seen him in fourteen Days. .

Mr. Tho. Stringer was sworn.

He depos'd, That *Berry* said upon his Examination, that he had Orders from the Queen, or in the Name of the Queen, that he should suffer no Strangers, or any Persons of Quality to come into *Somer-set-House* the 12th, 13th, or 14th Days of *October*, and that the Prince did come, and he did refuse him ; but he said, he never had had such Orders before.

Berry, the Porter, affirms he had Orders to let no body into Som. House the 12th, 13th, or 14th Days of *October*.
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L. C. J. It was a very unlucky thing that he had them then.

Berry. I had such an Order from the Queen's Gentleman-Usher, but the Prince might have gone in if he would, and several did go in ; and I did not say I never had such Orders before, for I had the same formerly.

Mr. Justice *Wild*. This is a kind of reflecting Evidence, and no more should be made of it than the thing will bear.

Mr. Attorney. No body here offers it as such : We use it only to shew, that *Berry*, who was a Party to this Murder, endeavour'd to prevent Strangers coming in those Nights to discover it, and therefore pretended these Orders.

Stephen Farr was sworn.

He depos'd only, that *Berry's* Wife was with him to know if he remember'd her Husband was with him the 16th of *October*, but he did not remember he was.

L. C. J. What do you say for your selves ?

Then *Hill* call'd his Witnesses, and first

Mrs. *Mary Tilden*.

Hill, Pray tell what you can say about my being in my Lodging.

The Prisoner's Defence.
Page 231.

Mary Tilden. He has liv'd in my Uncle Dr. *Godwin's* Family seven or eight Years : We left him always in the House, when we were absent ; he was a

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trusty

Evidence of
Hill's being
within always at
eight a Clock at
Night.

rusty Servant, and kept good Hours; he always came in by eight a Clock at Night.

Mr. Just. *Dolben*. Always; for how long?

M. *Tilden*. Ever since we came into *England* last, which was in *April*; and particularly he was not out after eight a Clock that Night they said Sir *E. Godfrey* was kill'd.

L. C. J. How can you give such an Account, as if he was always in your Company?

M. *Tilden*. He came in to wait at Table, and did not stir out afterwards.

L. C. J. And you are sure he was at home every Night.

M. *Tilden*. Yes, while we were in Town; for when he came in, I always sent my Maid to bar the Door.

Mr. Recorder. You did not always watch him, while you went to Bed, did you?

M. *Tilden*. If your Lordship saw the Lodgings, you would say, it were impossible for any to go in or out, but that we must needs know it. We are constant in our Hours of going to Supper, and our Doors were never opened after he came in to wait at Supper.

L. C. J. Where was he that *Wednesday* Night, when you say it was reported Sir *Ed. Godfrey* was murder'd? He having been missing from the *Saturday* before.

M. *Tilden*. He was at Home.

L. C. J. They have a general Answer for all Questions: Who kept the Key of the Door?

M. *Tilden*. The Maid.

Mr. Just. *Jones*. How do you know that the Maid did not let him out?

Practise. She confess'd, there were four or five Keys.

M. *Tilden*. There was but one that kept the Door fast.

Mr. Just. *Jones*. When were you out of Town?

M. *Tilden*. In *October*.

Mr. Just. *Jones*. You have undone the Man, instead of saving him.

M. *Tilden*. Why, my Lord, I only mistook the Month.

Mrs. Broad-

Mrs. Broadstreet appear'd.

L. C. J. When were you out of Town ?

Broadstreet. In September.

L. C. J. to Mrs. Tilden. Either you consider not what you say, or say any thing to serve a Turn.

M. Tilden. No ; I know it was September we were out of Town, and we came to Town the latter end of September : And it is impossible, if the Body was in the House, as he says it was, but some of us must see it ; I us'd to go into that little Room myself every Day for one thing or other.

That the Corps could not be in Hill's Chamber, and the rest of the Family be ignorant of it.

Broadstreet. We came to Town upon a Monday ; Michaelmas Day was the Sunday following ; and from that time neither he nor the Maid us'd to be abroad after eight a Clock ; the Lodging was so little, that nothing could be brought in, but they within must know it ; the Room they speak of is even with the Dining-Room, and over against it ; and the Key was always in the Door, and every Day some body went into it for one thing or other.

Mr. Just. Wild. Then it's very suspicious, you must hear it brought in, or see it ; it lying there from Saturday till Monday, but I shall not judge you.

Broadstreet. But we did neither see it, or hear of it.

Mr. Just. Dolben. It's well you are not indicted.

The Court insinuate, the Prisoners Witnesses were privy to it.

Broadstreet. You know all these Things to be false, Mr. Praunce.

Praunce. You said before the Duke of Monmouth, he was gone from his Lodgings before that time.

Sir Ro. Southwell. She swore then, two or three Days after Michaelmas Day.

Broadstreet. I only said, I could not tell the time exactly.

Katherine Lee, the Maid, was call'd.

Lee. I never miss'd him out of the House at those Hours.

Mr. Just. Dolben. Might not he go out of the House, and you not know it ?

Page 233.

Lee. Yes ; for I did not watch him always.

Mr. Just. Wild. Were you on the Sunday in the Room where the Body was laid ?

The TRYAL of

Lee. I cannot say I was in that Room, but I call'd in at the Door every Day, and I was the last up every Night.

Daniel Gray was call'd.

Hill. I desire he would say where I was those five Days *Sir E. Godfrey* was missing.

Gray. I kept my Brother *Hill* Company from the eighth of *October* till he took his House, which was the twenty second, or twenty third, and about nine or ten a Clock at Night I us'd to part from him, and go to my own House.

Robert How was call'd.

He depos'd, That *Hill* met him, and told him he was taking a House, and desir'd him to view what Repairs were wanting: That the eighth they began to repair it, and work'd at it for twelve Days following, and *Hill* was with them every Day: That the twelfth of *October* *Hill* was with the Deponent from nine or ten in the Morning, till one or two in the Afternoon; and his Man told him he was there again about four in the Afternoon.

L. C. J. Are not you a Protestant?

How. Yes, my Lord, I think so,

Praunce. He is a Catholick, my Lord: He was the Queen's Carpenter.

Hill. He tells you I was with him from nine on Saturday Morning till one.

Mr. Just. Jones. And that is as true, as that he is a Protestant.

Mr. Cutler was call'd.

He depos'd, That on the 12th of *October* *Hill* came to his House about five a Clock, and staid till seven or eight, when his Wife came for him, and said, some Gentlewoman wanted her Supper, and then he went home.

Richard Laxinby depos'd, That he din'd with *Mr. Hill* and *Mr. How* the 12th of *October*, and that he saw him the Wednesday Night following from five to seven.

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Mr. Archibald depos'd, That on the Monday Night he was at *Mr. Hill's* House; and telling him that *Praunce* was taken up for the Murder of *Sir Ed. Godfrey*. *Hill* said he was glad of it, and wish'd they were all taken.

Hill.

Hill. If I had known my self Guilty, I had time enough after this to make my Escape.

Mrs. Hill, the Prisoner's Wife, offer'd a Paper to the Court, containing Exceptions to the Indictment, which they refus'd to read, but bid her give it her Husband.

Hill urges it as an Argument of his Innocence, that he did not go out of the way, when he was told he was suspected.

Warrier, Hill's Landlord, was call'd.

He depos'd, That on the 12th of October he was at his House half an Hour after seven, and was not out of his House till after Ten.

This contradicts Mrs. Tilden's Evidence, who says he was not out of the Lodgings in Somerset-House after eight.

L. C. J. Pray how came you to recollect it was that Day?

Warrier. I call'd it to mind by my Work.

Capt. Richardson. My Lord, since their Arraignment, I went to his Landlord and Landlady, and ask'd if they could say any thing as to this particular Day; and they said, they could do him no Good at all.

Mrs Warrier call'd.

L. C. J. How do you know it was that Saturday?

Page 215.

Mrs. Warrier. It was the Saturday Fortnight after Michaelmas Day; we did look upon the Almanack, and reckon it so.

Mr. Justice Dolben. Then that was the 19th of October.

And 'tis plain they mistook a Week, for Hill was not gone from Som. House till afterwards.

L. C. J. Why you told him you could do him no Good, and indeed you do not.

Mr. Just. Jones. You and your Wife speak of the same time, don't you?

Warrier, Yes.

Then the Maid came in.

She affirm'd, That the Saturday Fortnight after Quarter-Day he came in pretty betimes.

L. C. J. Can you speak of any other time?

Maid. He came in every Night before nine of the Clock.

Mr. Ravenscroft appeared.

He depos'd, That he call'd at Hill's House the Night before he was taken up, and his Wife told him of Praunce's being taken up for the Murder of Sir E. Godfrey, and said, it was mutter'd her Husband was concern'd: but that he defied Praunce and all his Works. I ask'd, where her Husband was? And she said, he was within: Which I look'd upon

The TRYAL of

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The TRYAL of

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L. C. J. Then this Discourse was after *Archibald* was there.

Ravensf. *Archibald* had been there before, and spoken of it in his Company.

Page 236.

L. C. J. Well, *Berry*, what have you to say?

Berry call'd Corporal *William Collet*.

The Corporal and Centinels depose, that no Sedan went out of *Somerset-House* that Night the King's Evidence say Sir E. Godfrey was carried out.

He depos'd, That on *Wednesday* the 16th of *October*, being the Night the King came from *New-Market*, he plac'd the Centinels at *Somerset-House*; that he plac'd one *Nicholas Trollop* within the Wicket of the Great Gate from seven to ten, and then *Nicholas Wright* reliev'd him, and he stay'd from ten till one.

Nicholas Wright, the Centinel, appear'd.

He depos'd, That there was no Sedan went out the time he stood there.

Trollop. There was one came in, while I stood there, but it was set down within the Gate.

Mr. Just. *Wild*. But did not you go to drink, or tippie all that time?

Trollop. No, nor walk a Pike's Length off the Place of Centry.

Mr. Just. *Dolben*. How can you remember so particularly so long ago?

Collet. We were examin'd by a Committee of Council before *Praunce* was taken up, a matter of a Month or six Weeks after the thing was talk'd of. And it was the same Night the Queen went from *Somerset-House* to *White-Hall*.

Gabriel Husket appear'd.

Husket. I was Centinel that Night from one till four.

L. C. J. What Night?

Husket. That Night the King came from *New-Market*, and the Queen went from *Somerset-House*, which was on a *Wednesday* the 16th Day of the Month.

Eliz. Minsbaw, *Berry's* Maid, appear'd.

She depos'd, That her Master was about the Gate when the Queen went away, and then he went to Bowls, and came home about the time it was dusky, and was not absent an Hour till he went to Bed, which she thought was about twelve a Clock.

Mrs. *Hill*.

Page 237.

Mrs. Hill. I desire Mr. Praunce may swear why he denied all he had depos'd.

Praunce. It was because of my Trade, my Lord, and for fear of losing my Employment from the Queen and the Catholicks, which was most of my Business; and because I had not my Pardon.

Mrs. Hill. Was he not tortur'd to make his Confession?

Praunce. No, my Lord; Capt. Richardson us'd me as civilly as any Man all that time.

Mrs. Hill. Well, I am dissatisfied; my Witnesses were not rightly examin'd; they were modest, and the Court laugh'd at them.

Berry. The Centinels that were at the Gate all Night let nothing out.

L. C. J. You could open the Gate your self.

Berry. But he says he should have seen if the Gate had been open'd; and that he never saw the Gates open'd.

Mr. Just. Dolben. Well, the Jury have heard all, and will consider of it.

Mr. Attorney, in his Observations on the Evidence, said, that this was a Murder committed thro' Zeal to a false Religion; and that Religion was such a Bond of Secresy, that tho' his Majesty had issued out his Proclamation, proposing a Reward to the Discoverers, yet it had been almost without Effect; and he believ'd, if Mr. Praunce had not had some Inclination to change his Religion before, they had still been without that clear Discovery they now had; and concluded with a Text out of Judges: *The People said there was no such Deed done, &c.*

Page 238.
Mr. Att. General's Observations on the Evidence.

Mr. Solicitor observ'd, That it was not pretended, Mr. Praunce was brib'd to give his Evidence; and that he had even neglected to lay hold of the Reward in the Proclamation, for that he denied all, when he was first apprehended; and that he did not confess till he found himself in Custody, and likely to be brought to Justice.

Then the Ld. Ch. Justice sum'd the Evidence pretty exactly for the King, giving it at least its full Weight, but hardly mention'd the Evidence that was given for the Prisoners, saying, that all their Evidence was slight, and answer'd itself, or else it

Page 240.
The Ch. Justice directs the Jury against the Prisoners.

was

The TRYAL of

was impossible to be true ; all the Testimony that was considerable was what the Centinels had given for them, (*viz.*) That they saw no Sedan go out that Night ; but he insinuated, that either they might be mistaken, or might not be honest Men ; and suggested, that the single Evidence of a Centinel ought not to overthrow that whole Series of Evidence, that had been given for the King ; and said, that this Gentleman had been murder'd, either because he knew something the Priests would not have him tell, or they did it in Defiance of Justice, and in Terror to all those who dare execute it upon them.

Page 241.

The Prisoners
are convicted.

Then the Jury withdrew, and after a short Recess brought in all the Prisoners *Guilty*, for which the Chief Justice commended them ; and said, if it were the last Word he had to speak, he should have pronounced them *Guilty*.

Page 242.
And receive
Sentence the
next Day, tho'
they were try'd
at Bar.
Tipstaff de-
mands their
Cloaths, as his
Fee, but not
allow'd.

Make Protesta-
tions of their
Innocence.

On *Tuesday* the 11th of *February* the Prisoners were brought again to the Bar, in order to receive Sentence.

Mr. Recorder inform'd the Court, that one of the Tipstaffs had taken the Prisoners Coats off their Backs immediately after their Conviction as his Fee : And the Tipstaff insisted, that the Upper Garment was his Fee, where a Prisoner was try'd at the Bar ; but the Court order'd their Cloaths to be restor'd them — Then the Recorder, in the Absence of Mr. Attorney, pray'd Judgment against the Prisoners : And it being demanded, what they had to say in Arrest of Judgment, they only made Protestations of their Innocence : And Mr. Just. *Wild*, being second Judge in that Court, whose Office it is to pronounce Judgment in all criminal Matters, except High-Treason, after he had made a Speech, shewing the Greatness of their Offence, and exhorting them to a Confession, proceeded to pronounce the Sentence ; *viz.*

Page 244.

That you go from hence to the Place from whence you came ; and from thence to the Place of Execution, where
you

PHILIP Earl of Pembroke, An. 1678.

61

you shall be severally hang'd by the Neck, 'till you are severally dead.

N. B. They ought to have had four Days allow'd them to move in Arrest of Judgment, being try'd at the King's-Bench Bar, or at least as many Days as there were remaining in the Term, by the Course of that Court.

The Prisoners mov'd, that their Friends and Relations might have Liberty to come to them, which was granted; but they were denied to have any Popish Priests with them: And they were executed Febr. 21. following.

Denied Priests to come to them.

They are Executed.

The Tryal of PHILIP Earl of Pembroke and Montgomery, before the House of Peers, the fourth of April, 30 Car. II. 1678, for Murder.

Page 83.

ABOUT Noon the Lords came from their House above, in their usual Order, to the Court erected for them in *Westminster Hall*; and the Lord High-Steward's Commission being read, as also the *Certiorari* to the Commissioners, before whom the Indictment was found, and the Return thereof, the Constable of the Tower was commanded to return his Precept, and bring his Prisoner to the Bar. The Constable of the Tower being a Peer, Sir *John Robinson*, his Lieutenant, brought the Earl of *Pembroke* to the Bar: After which the Lord High-Steward made a Speech to the Prisoner; wherein he acquainted him, that he stood charg'd with no less a Crime than Murder, by the Grand-Jury of the County of *Middlesex*, who were all Men of Quality; but that this was no more than an Accusation, upon which their Lordships should not prejudge him; the Examination of the Grand-Jury having been but partial: That his Lordship was now to be tried in full Parliament, and not by a select Number of Lords: That the being made a Spectacle to such an august Assembly, and having his Faults and Weak-

The Earl brought to the Bar.

The L. H. St. makes a Speech to him.

nesses

Page 24.

nesses expos'd, must be very mortifying ; and it behov'd his Lordship to recollect himself, and use his utmost Caution in his Defence, but advis'd him not to let the Disgrace of standing as a Felon at the Bar too much deject him ; or the Terrors of Justice amaze him ; for whatever might lawfully be hop'd for, his Lordship might expect from the Peers : And if he were dismay'd, when he consider'd how inexorable the Rule of Law was in the Case of Blood (which their Lordships indeed could not depart from) yet it might be a Support to him to consider, that nothing but plain and positive Proof, and such as deserv'd to be call'd Evidence, would be receiv'd against him : That their Lordships thought themselves bound in Honour to be Council for him in Matters of Law ; and that tho' there were Council to plead against him, no Skill or Arguments could pervert their Lordships Justice ; he should not fall by the Charms of Eloquence, or be depress'd by any thing but the Burthen of his Crime, and even as to that all candid Allowances would be made.

Then the Prisoner was Arraign'd, (and held up his Hand.)

The Indictment
for the Murder
of Mr. Cony.

The Indictment set forth, " That the Prisoner, upon the 4th of February, in the thirtieth Year of the King, at the Parish of St. Martin in the Fields, in Com. Middlesex, did make an Assault on Nathaniel Cony, Gent. and with his right Fist did strike the said Cony on the left part of his Head, and knock'd him down, and being so down, did strike, bruise, beat and kick the said Cony upon the Head, Neck, Breast, Belly, Sides and Back, of which Striking, Bruising, Kicking, &c. the said Cony did languish from the said fourth of February until the tenth of the same Month, and then died. And so the said Philip, Earl of Pembroke, &c. did feloniously, wilfully, and of his Malice aforethought, kill and murder the said Nathaniel Cony against the King's Peace, &c.

To which Indictment the Prisoner pleaded, Not Guilty.

Then Sir Will. Dolben, the King's Serjeant, open'd the Indictment.

Mr. Astors.

Mr. *Attorn.* in opening the Evidence observ'd, that in Law there were two sorts of Malice, the one express, *i. e.* When a Man can be prov'd to have borne before-hand an ill Will and Hatred to the Person he kill'd ; (which they did not pretend to be in this Case) The other sort of Malice, which also in Law gives the Denomination of Murder to the killing of a Man, is Malice implied ; which is, when a Man, without any Provocation given by the Party slain, shall bring another by Violence to his Death : For the Law supposes, that no Man without a Provocation would kill his Brother, unless he had Malice to him before-hand ; and this was the Malice they charg'd the Prisoner with, That he kill'd the deceased without any Provocation——

Sir *Wm. Jones.*
Page 45.
Malice express,
and Malice im-
plied, defin'd.

Mr. *Attorney* having open'd the Nature of the Evidence, the Witnesses were call'd and sworn, and Mr. *Henry Goring* first gave his Evidence.

Page 46.

Mr. *Goring* depos'd, That on *Sunday* the third of *February* last he and Mr. *Cony* (the deceased) din'd in the City, and staid there very late, and having drunk pretty hard, they call'd at *Long's Tavern* in the *Hay-Market* in their way home, where Mr. *Cony* would needs go in, and drink another Bottle ; that my Lord *Pembroke* being in a lower Room, and hearing Mr. *Cony* at the Bar, came out and ask'd Mr. *Cony* (whom he knew) and the Deponent to come in : And that after a while there arising some Dispute between my Lord *Pembroke* and the Deponent about Families and Play, wherein my Lord thought himself injur'd, my Lord threw a Glass of Wine in the Deponent's Face ; and my Lord rising up to draw his Sword, the Deponent laid his Hand on his, and Capt. *Savage* step'd between them, and the Drawer came in, and shov'd the Deponent out of the Room : That the Deponent, as they were thrusting him out, heard a Noise behind him, and saw my Lord make towards Mr. *Cony* ; that the Deponent, when he was out, missing his Sword and Hat and Wig, made a Noise at the Door, and the Landlord getting out of his Bed, and coming to him, he desir'd his Things again, and that he might go in and see what they had done with Mr. *Cony*, for he was afraid he was in Danger ; but the People

Evidence of the
Earl of Pem-
broke's being in
the Company of
the deceased at
a Tavern in the
Hay-Market.

of

of the House persuaded the Deponent to go into another Room, and said, they would bring Mr. Cony to him : And the Deponent having waited pretty long, at last the People of the House came to him, and told him now he might go in if he pleased : And when he came in, he found a Gentleman lying along upon the Chairs, and no body else in the Room ; that he took the Candle to see if he was wounded, and would have awaked him, but could not ; and the Drawer said he was only dead drunk, and would come to himself ; whereupon the Deponent directed the Drawer to get some Blankets and Pillars, and set some Chairs to make the Place broader, and bid him be sure to watch with him 'till he wak'd, which he promis'd to do ; and that the next Day Mr. Cony sent to the Deponent's Lodgings, but the Deponent being gone out, he did not go to him 'till the Tuesday ; when Mr. Cony told him, that he was very much abus'd in my Lord's Company ; that my Lord *Pembroke* threw him down, and some body trod upon him, and kick'd him, and that he expected Satisfaction of my Lord, and said, he hop'd the Deponent would carry his Lordship a Challenge : That the Deponent asking Mr. Cony who trod upon him, he answer'd, he knew not, for he was in a Swoon ; it was either my Lord *Pembroke*, or some of his Creatures for him.

That my Lord
threw the de-
ceased down.

Page 87.

Att. Gen. Had you any Discourse with him afterwards ?

Mr. Goring. Yes, every Day 'till the Thursday Night ; and he complain'd of his Belly, his Sides, and his Shoulders, and said my Lord *Pembroke* had done him the Injury in throwing him down.

Att. Gen. How long was it, after you was thrust out of the Room, that you found him on the Chairs ?

Mr. Goring. About half an Hour.

Mr. Richard Savage was call'd.

He depos'd, That being in Company with my Lord *Pembroke* at Mr. Long's in the Hay-Market, and Mr. Cony making a great Noise at the Bar, my Lord looked out at the Door of the Room where they were, and seeing Mr. Cony, invited him and his Friend Mr. Goring into the Room, and after some time

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time falling into Discourse, Mr. *Goring* us'd some impertinent Language to my Lord, and told his Lordship, he was as good, or a better Gentleman than he ; upon which my Lord threw a Glass of Wine in *Goring's* Face, and step'd back, and drew his Sword ; and *Goring* being about to draw his, the Deponent took it from him, and broke it, and persuaded my Lord to put up his Sword again ; but to prevent more Words, the Deponent shov'd Mr. *Goring* out of the Room ; and while the Deponent was thrusting him out, he heard a Bustle behind him, and leaving the Drawer to keep Mr. *Goring* out, he turn'd and saw my Lord *Pembroke* strike Mr. *Cony*, who immediately fell down, and then my Lord gave him a Kick ; and they finding Mr. *Cony* did not stir, my Lord and the Deponent took him off the Ground, and laid him on the Chairs, and cover'd him up warm.

That my Lord kick'd the deceased, when he was down.

Att. Gen. Did my Lord kick him but once ?

Savage. My Lord kick'd him but once that I saw, and that was on the Body, and not with a very great Force : We chafed his Temples, and he open'd his Eyes, but did not speak ; when I ask'd him if he knew me, he shook his Head as if he did, and then clos'd his Eyes again.

Att. Gen. What Condition was he in before that Accident ?

Savage. He was very drunk, and, I think, propos'd something about Play to my Lord ; but how my Lord came to strike him, I can't tell, for I was putting *Goring* out of the Room.

Att. Gen. Did you see Mr. *Cony* after that time ?

Savage. I went two Days after to see Mr. *Cony*, and he ask'd me, if my Lord struck him, for he did not know ; but finding himself in much Pain, he thought he had fallen partly thro' Drink, and partly thro' his Fits he us'd to have.

Page 88.
The deceased troubled with Fits.

Mr. *Shelly* call'd.

He depos'd, That he was in the Room at Mr. *Long's*, when Mr. *Cony* and Mr. *Goring* came in ; that they were both in Drink, and after some time *Goring* propos'd Play to my Lord, and my Lord said, he would throw with him for 500*l.* and was sending for the Money, but then *Goring* would not play,

The TRYAL of

and his Lordship said, he believ'd he was an idle Fellow ; *Goring* replied, his Name was a better Name than his Lordship's, and himself a better Gentleman ; whereupon my Lord threw a Glass of Wine in his Face, and Mr. *Goring* step'd back, and drew his Sword, and my Lord drew his ; but *Savage* step'd between them, and put *Goring* out of the Room, and my Lord desir'd Mr. *Cony* to go out with his Friend, but he said he did not know why his Friend was put out ; whereupon my Lord hit *Cony* a Box on the Ear, which threw him down ; and the Deponent saw my Lord lift up his Leg pretty high, as if he would have kick'd him, but could not say he kick'd him ; and that he saw them lay Mr. *Cony* on the Chairs, as the last Witness depos'd, and that he was senseless.

Att. Gen. What do you think was the Occasion of it ?

Shelly. I believe his Drink, as well as the Blows.

Att. Gen. Did you see him after that ?

Shelly. Yes, I saw him three Days after, and on the *Saturday* ; and he said he had had a Fit, and was pretty well recover'd, but did not impute any thing to my Lord *Pembroke*.

Capt. Fitz-Patrick call'd.

He depos'd, That Mr. *Cony* being at the Bar at Mr. *Long's*, my Lord *Pembroke* saluted him, and invited him and his Friend, Mr. *Goring*, into the Room where his Lordship and his Company were, (as the other Witnesses depos'd :) That *Cony* and *Goring* were both in Drink, and after a Glass or two *Goring* said, he would drink, play, or fight with any Man ; and my Lord ask'd, who he was, that he should never hear of him ? How, said *Goring*, Sblood, not hear of me ! My Name is *Goring*, a Name and Family as good as any Gentleman's in *England*. No body doubts it, said my Lord. Your Betters, said *Goring*. And that then my Lord threw the Wine in his Face ; and *Goring* going to draw, was put out of the Room by *Savage* ; and that my Lord upon some Words knock'd down *Cony* with his Hand ; and the Deponent asking my Lord the Reason of it, my Lord said, *Cony* told him, *Goring* should not go out of the Room, 'till he knew some Reason for it :
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That the Deponent being on the other side of the Table, he could not tell whether he stamp'd on *Cony*, or kick'd him, he only saw my Lord's Knee move ; that he could not kick him more than once, for they ran in, and took *Cony* up, and laid him on the Chairs, as the other Witnesses depos'd ; and having cover'd him warm, and order'd the Drawer to take care of him, they left him.

Dr. David Bruce was sworn.

He depos'd, That coming to Mr. *Cony* the Monday after this Accident, he found him in such Extremity of Pain between his Shoulders, that he could not bear to be touch'd ; that having given him something to assuage those Pains, he came to him again on *Wednesday*, and then Mr. *Cony* complain'd of Pains in his Belly, but the Deponent could see no Blemish either by discolouring, or bruising, and the Deponent left him then in a hopeful way of Recovery, but did not see him afterwards, having been sick himself : And that the Deponent telling Mr. *Cony*, when he visited him, that there was a Report he had been kick'd, he was displeas'd that any such thing should be reported.

The Physician's Evidence of the Pain the deceased was in after these Blows.

Mr. Hemes was sworn.

He depos'd, That he was sent for to Mr. *Cony* the Morning after this Accident ; that he complain'd of great Pains all over his Body, but especially on his Shoulders and Buttocks ; that when the Doctor applied Plaisters, and order'd him to be anointed, he could hardly bear they should touch him, but that they saw no Swelling, or Bruise ; and he complain'd of an inward Soreness in his Belly from first to last ; (the Deponent being with him every Day till he died :) That being open'd after he was dead, they found a great deal of Blood gather'd together on both the Hypochondria's in the lower part of his Belly, of a blackish livid Colour.

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Mr. Jackson was call'd.

He depos'd, That he had been acquainted with Mr. *Cony* (the deceased) above twelve Years ; that he look'd upon him as a Person of a strong, healthful Constitution, and not subject to any dangerous Distemper : That the *Wednesday* after this Accident the Deponent went to visit him, and Mr. *Cony* told the

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Depo-

The *TRIAL* of

Deponent, he had been troubled with very unusual Swoonings, and at that time he fell into a Fit, that they had a great deal of Trouble to recover him out of; that on the *Friday* and *Saturday* the Deponent was with Mr. *Cony* all Day; and that he complain'd of great Pain in his Belly, and said, he believ'd it was occasion'd by some ill Usage he had receiv'd lately.

Att. Gen. From whom had he receiv'd it?

Jack son. He said he was drinking with my Lord *Pembroke*; but he was in such Pains, I could not ask him many Questions, and he was very sparing in telling whom his Hurt came from.

Att. Gen. When did he complain first of his Fits to you?

Jack son. On the *Wednesday*; and he died the *Monday* following.

Alice Avery, Mr. *Cony's* Nurse, was call'd.

She depos'd, That Mr. *Cony* came home about eight a Clock on the *Monday* Morning, and that he was so very ill, he could scarce stand; that the Deponent saying, surely he was in Beer, Mr. *Cony* answered, No, he was very sore, and full of Pain, and had been in some Company where he had receiv'd a great deal of Wrong; that he had been beaten and kick'd more than ordinary, and was never so abus'd in his Life: And about two Hours before he died, he wish'd to God he had never been in my Lord *Pembroke's* Company, for he did think in his Conscience my Lord had been the Death of him.

Mr. *William Brown* was sworn.

He depos'd, That he was upon the Coroner's Inquest the Day after Mr. *Cony* died; that his Body was prodigiously swell'd; that on his right Breast there was a great black Bruise, and upon the left Side a great black Spot; that they desir'd to see his inward Parts, and found the Caul wasted away, and in the Bottom of his Belly a great Quantity of ill-look'd Blood.

Mr. *Richard Wheeler* was sworn.

He depos'd, That he was also of the Inquest, and observ'd a great black Bruise on the right Breast of the deceased, and on the left side of his Belly another; and that the whole Body was very much swell'd;

The deceased imputed his Illness to the Usage he receiv'd in my Lord *Pembroke's* Company.

Page 91.

The Evidence of some of the Coroner's Inquest, who depose, that they observ'd several Bruises, and a great deal of clotted Blood, at the bottom of his Belly.

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swell'd ; and that there was settled Blood in the Bottom of his Belly.

Mr. *Thomas Roberts* was sworn.

He depos'd, That he saw a great Quantity of black congeal'd Blood in the Bottom of the Belly ; that the Bruises were as broad as his Hand, and the Body very much swell'd.

Charles Cony, Brother to the deceased, was sworn.

He depos'd, That being sent for to his Brother on *Monday* the fourth of *February*, about nine in the Morning, he found him almost dying, and his Eyes set, but in a little time they recover'd him : That understanding my Lord *Pembroke* had struck him a Box on the Ear, and knock'd him down, the Deponent and his Brother both concluded how it came, tho' his Brother (the deceased) could not remember what was done ; and therefore, to know the Truth of the Matter, they sent for the Drawer, who assur'd them my Lord never struck him ; and that in the Afternoon the Drawer persisted in the same Story : That all the while his Brother was in the horridest Pain that could be, and could not bear to be touch'd, but was forc'd to lie upon his Back ; but that at length some Applications being made, on *Tuesday* he was pretty much at Ease, on *Wednesday* he rose, and on the *Thursday* he was so well, that he would have some Friends dine with him in his Chamber : On *Friday* he was a little ill again, but on *Saturday* he was so well, that he would have gone abroad : That Dr. *Conquest* told the Deponent, he could not tell whether it was a *Pembroke* Kick, or no ; and the Deponent did not think he would have died, 'till about two Hours before he did ; and that when the Deponent mention'd the Report of my Lord's having abus'd him, he was displeas'd, that any one should speak of it.

Then Mr. *Jackson*, the Surgeon, was call'd again, and depos'd, That he was present at the opening Mr. *Cony's* Body, and found an extraordinary Quantity of extravasated Blood at the Bottom of his Belly ; that there was also a Swelling, and the Diaphragma was bruise'd : That he believ'd, this was occasion'd by some Violence, that was done to him.

The *TRIAL* of

The Prisoner's Witnesses being call'd ;

Dr. Conquest appear'd.

The E. of Pemb.
bro's Witnesses
examin'd.

Page 93.

Dr. Conquest depos'd, That the first time he waited on the deceased Mr. Cony, as a Physician, was about three Months before this Accident, when he was sent for to him to the *Rose Tayern*: That he had then been in a fainting Fit, and had lain as dead for half an Hour, as the Deponent was told, but by some Applications, that had been us'd, he was just coming to himself, as the Deponent came in, tho' he had then no Pulse, and was like to relapse again; but giving him some Drops and a Cordial, the Deponent sent him home pretty well: That the next Day the Deponent attended the deceased again at his Lodging, and found him very ill and melancholy, insomuch that he wept, and said, he found so great an Oppression at his Heart, that he could hardly speak; but that the Deponent could not dissuade him from going abroad; that he went out that Day, and drank very hard, and did not return 'till it was late: That the Deponent had been sent for twenty times to recover him out of his Fits, but he would take no Advice—— That the Deponent was sent for the Day after this Meeting with my Lord *Pembroke*, and found the deceased in great Pain, but so ignorant of what pass'd the Night before, that he only thought he had some Falls off the Chairs near the Fire: That two or three Days after the deceased sent for the Deponent, and said, he would take his Advice, and enter into a Course of Physick; but the Deponent knowing his Case to be very bad, propos'd the having another Physician, and on the *Saturday* brought Dr. *Lower* with him: That when they were with the deceased, he acknowledg'd he had been a hard Drinker of Wine and strong Waters upon it, which, the Deponent believ'd, caus'd the Stagnation of Blood in his Body, and might occasion the fainting Fits; That the deceased owned no Blow nor Kick he had receiv'd, and the Deponent believ'd his Entrails had receiv'd no Prejudice, because he saw him take two or three Clysters; That this very *Saturday* Night he was so irregular, that he drank three whole Tankards of cold small Beer, which gaye him a violent Fit of

the

the Gripes ; and the Deponent being sent for again, the deceased had vomited all Night, and he found him dying away ; that having brought him to himself again, he still continued very bad, but still swore he would have more small Beer : That the Day Mr. *Cony* died, the Deponent attended him again, and order'd eight Ounces of Blood to be taken from him, and returning an Hour after, he found him dead—— That the Deponent saw him open'd, and there was clotted Blood among the Bowels ; the breaking out of which he attributed to the great Quantity of small Beer the deceased had drunk, and the Gripings that follow'd upon it, (and said, Mr. *Cony* himself attributed his Fits to that) and that the Bowels were none of them touch'd.

Dr. *Lower* was call'd.

He depos'd, That he went with Dr. *Conquest* to Mr. *Cony's* Lodgings the *Saturday* before he died ; and that Mr. *Cony* told him, his Fits came upon him suddenly, by Sickness upon his Stomach, but said nothing of any Bruise or Hurt, nor had the Deponent any Reason to suspect that any such thing should be the Cause of his Illness, for he had no Symptom of a Fever upon him either in Tongue, Pulse, or Urine, which would have been, had he owed his Distemper to any thing of that kind.

The Doctors of Opinion, that the hard Drinking occasion'd his Death, and not any ill Usage.

L. H. S. Were the Fits Mr. *Cony* had in his last Sickness the same with those he had before ?

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Dr. *Conquest*. Yes, the same fainting Fits ; and I imputed them to his hard drinking Wine, and strong Waters, and then great Quantities of small Beer.

Mr. *Raven*, a Surgeon, call'd.

He depos'd, That it being reported there was a Bruise on each side of the Belly of the deceased, he view'd the Body the more carefully, but found no Blackness or Blueness, or Marks of Bruises : That when the Body was open'd, there issued some clotted Blood : That the Caul was consumed, and the Heart as loose as a Rag, and his Lungs stuck to each side of his Ribs : That in all natural Deaths there is extravasated Blood in the lower Belly, and

A Surgeon deposes, that the Body had no Bruises to be seen upon it.

The TRYAL of

the great Quantity that was there, he imputed to his drinking small Beer after strong Liquors, which set him a vomiting, by the Violence whereof the Blood was thrown down into the Belly.

Long, a Vintner in *Covent-Garden*, was call'd.

He depos'd, That a little before this Accident *Mr. Cony* was taken with fainting Fits at his House, and sent for *Dr. Conquest*; and when the Doctor came, *Mr. Cony* told him he was taken with his fainting Fits, and fear'd they would kill him; whereupon *Dr. Conquest* bid him have a care of drinking, or it would ruin him.

Viner, *Long's* Drawer in the *Hay-Market*, call'd.

He depos'd, That he came into the Room just as my Lord *Pembroke* struck the deceased, and that *Capt. Savage* bidding the Deponent keep out *Goring*, he knew not what more was done then; but afterwards having laid the deceased upon Chairs, they charg'd the Deponent to make a Fire, and look after him, and left him: That the deceased fell off the Chairs several times, and the Deponent help'd him up again: That when he came to himself he said he was very sick, and had several fainting Fits; and that at seven in the Morning they sent him to his Lodgings in a Chair: That when the Deponent was sent for by the deceased and his Brother, he did not think fit to tell them my Lord struck him, but only told them he had several Falls in the Room; and the deceased answer'd, 'twas Fits that he had been troubled with, occasion'd by his hard drinking, and not looking to himself: He could not tell any thing my Lord did to him, he was drunk that Night, and therefore sent for the Deponent to know how it was.

Page 95.

L. H. Sr. Will your Lordship say any thing for yourself?

E. of Pembroke. I have nothing more to say, my Lord.

Sir Fran. Win-
nington.

Mr. Solicitor having sum'd up the Evidence for the King, and defin'd what Murder in our Law was, as *Mr. Attorney* had done in opening the Evidence, the Lords went to their House above, and after two Hours Debate return'd, and having taken their Places, the Lord High-Steward, beginning with the

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puisne Baron, (my Lord *Butler*) demanded of their Lordships severally in their Order, *If Philip Earl of Pembroke and Montgomery were Guilty of the Felony and Murder whereof he stood Indicted, or Not Guilty?* And my Lord High-Steward having numbred them, declar'd, That Six of their Lordships had found the Prisoner Guilty of *Murder*, Eighteen had found him *Not Guilty*, and Forty had found him Guilty of *Manslaughter*. Then the Prisoner was commanded to be brought to the Bar again, and the Lord High-Steward acquainted him, That the Judgment of the Lords was, that he was Guilty of *Manslaughter*; and demanded what he could say, why Judgment should not pass upon him to die, according to Law?

My Lord *Pembroke* is found Guilty of *Manslaughter*.

The Earl of *Pembroke* answer'd: He claim'd the Privilege of the Statute.

The Lord High-Steward told him, he must have it; for as by the Act, Clergy was allow'd to a Commoner by reading and burning in the Hand, a Peer convicted of such Felony was to be deliver'd without either: But his Lordship would do well to take notice, that no Man could have the Benefit of that Statute but once.

Where a Commoner must read and be burnt in the Hand, a Peer shall be discharged without either.

Then his Grace dissolv'd his Commission by breaking his Staff.

The Tryal of WILLIAM STAYLEY, Goldsmith, for Treasonable Words, the twenty first of November, 30 Car. II. 1678.

Pag. 133.

THE Prisoner was indicted, " For that he not
" having the Fear of God before his Eyes,
" &c. and traiterously Compassing, Imagining, and
" Intending the Death of his Sovereign, did on the
" fourteenth Day of November, in the thirtieth Year
" of the King, at the Parish of St. Paul, Covent-
" Garden, in the County of Middlesex, speak certain
" Words in French, importing, That the King was a
" great Heretick, and the greatest Rogue in the World;
" and laying his Hand on his Breast, said further,
" There's

The Substance of the Indictment being for treasonable Words spoke in French.

The TRYAL of

" *There's the Heart, and here's the Hand, that would kill him : And the King and Parliament think all is over, but the Rogues are mistaken.* " Which were laid to be spoken contrary to his Allegiance, the King's Peace, &c.

The Prisoner being arraign'd on the 20th of November at the King's-Bench Bar on this Indictment, pleaded Not Guilty ; and on the Day following was brought down to his Tryal. The Jurors being call'd, and the Prisoner challenging none of them, a Jury was sworn, and charg'd with him, and the King's Council having opened the Indictment and the Evidence, the Witnesses were call'd ; and first

Mr. *William Casters* was sworn.

The Evidence.

He depos'd, That the Prisoner and one *Fromante*, another *Frenchman*, being at the *Black-Lion Alehouse* in *King-street* the 14th of this present Month, about eleven in the Morning, *Fromante* said in *French*, That the King of *England* was a Tormentor of the People of God ; and the Prisoner answer'd again in *French* in a great Rage, *He is a great Heretick, and the greatest Rogue in the World ;* and striking his Hand upon his Breast, and stamping five or six times, added, *There's the Heart, and here's the Hand, that would kill him ; and the King and Parliament think all's over, but the Rogues are mistaken :* That the Deponent was in a Room opposite to that the Prisoner and *Fromante* were in, and both Doors being open, he saw him, and heard him speak these Words, and was confident the Prisoner was the Person, for that he look'd towards the Deponent, when he spoke them : And the next Day the Deponent caus'd the Prisoner to be apprehended.

Mr. *Alexander Southberland* was sworn.

He depos'd, That he was with the other Witness at the said Alehouse, when the Prisoner spoke those Words in *French* ; that he saw Mr. *Stayley* perfectly, when he spoke the Words, the Doors being open ; and that he immediately wrote the Words down in *French*, as they were spoken : [And the Paper, which the Deponent wrote, being shewn to one of the Jury, who understood *French*, the Jurymen said, they had been well render'd into *English*.]

Philip

Philip Garret was sworn.

He depos'd, That he was with his Captain [*William Casters*, the first Witness] at the Alehouse, and that the Deponent not understanding *French* himself, his Captain told him, that the Prisoner said, he would kill the King; that the Captain said, this was not to be suffer'd; that he would run and call a Constable, and bid the Deponent enquire the Prisoner's Name, and where he liv'd, which the Deponent did.

The Prisoner said in his Defence, that he was indeed at the Place the Witnesses had testified, at the time they mention'd, with Mr. *Fromante*; but that their Discourse was, as usual, on the Happiness of this Government, compar'd with that in *France*: That he never mention'd the King's being an Heretic, but discoursed as innocently as ever he did in his Life: That he might say, he would kill himself, which the Witnesses understood of the King: That he had been look'd upon as a Person of Intelligence and Understanding in the World; and it could not be suppos'd he should speak these Words in *French* in a publick Room, with the Doors open, and so loud, that the Gentlemen in the next Room might hear them, especially in a Street where they were almost all *Frenchmen*: That he abhor'd the Words he was charg'd with, and was a great Admirer of his Prince.

The Prisoner's Defence.

Then the Chief Justice order'd the Statute of *Sir W. Scroggs*, 13 Car. to be read, on which the Prisoner was indicted, [Which says, "That whoever shall Command pass or Imagine the Death of the King, and declare the same by Printing, Preaching, advising or Speaking, &c. shall be adjudg'd Traitors.]" *Page 132.*

The Prisoner call'd a Witness to his Character, who depos'd, That he had often heard the Prisoner speak very loyally of his Prince, and that he detested the Principles of the Jesuites.

The Lord Chief Justice sum'd up the Evidence, and inveigh'd against the Principles of the Papists, and express'd his Apprehensions of the Dangers the King and Government were expos'd to by their Plots. He shew'd, that the Words were advis'dly and maliciously spoke; that they had been fully prov'd,

The Ch. Just. sums up the Evidence, and shews the Danger of Popery.

The **TRIAL** *of*

**Directs the Jury
to make the Pr-
isoner an example**

The Prisoner is convicted, and Sentence pass'd.

prov'd, and could bear no other Interpretation than what had been put upon them : And hop'd, the Jury would discharge their Consciences, as they ought to do ; and if the Prisoner was guilty, let him take the Reward of his Crime ; that they would do well to begin with this Man, and perhaps it might be a Terror to the rest.

The Jury, having consider'd of their Verdict, brought the Prisoner in Guilty : And Sentence was pronounc'd on him as a Traitor.

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*The Tryal of EDWARD COLEMAN Gent.
for High-Treason, at the King's-Bench
Bar, on Wednesday the 27th of Novem-
ber, 30 Car. II. 1678.*

The Prisoner makes no Challenges to the Jurors.

MR. Coleman having been arraign'd and pleaded Not Guilty the *Saturday* before, he was this Day brought to the *King's-Bench Bar* again; and the Jurors being call'd, Mr. Coleman made no Challenges; whereupon the following Jury was sworn, and charg'd with him. (*viz.*)

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Sir Reginald Foster, Bar.
Sir Charles Lee.
Edward Wilford,
John Bathurst,
Joshua Galliard,
John Bifield, Esqrs.

Simon Middleton,
Henry Johnson,
Charles Umfrevile,
Thomas Johnson,
Thomas Eaglesfield,
William Bobee, Esqrs.

Indictment for
Compassing the
Death of the
King, and Con-
spiring to sub-
vert the Govern-
ment, &c.

The Indictment set forth, " That the said Edward Coleman, as a false Traitor to his Majesty, not having the Fear of God before his Eyes, or weighing the Duty of his Allegiance, but contriving to disturb the Peace of the Kingdom, and destroy the true Religion by Law establish'd, and to stir up Sedition and Rebellion, and bring the King to his Death, did on the ninth Day of September, in the 27th Year of the King, at the Parish of St. Margaret, Westminster, in the County of Middlesex, maliciously and traiterously compass, Imagine, and Intend to raise Rebellion, " and

" and to depose and put the King to Death, &c.
 " And to effect his said Treasons, did at the Day
 " and Place aforesaid, traiterously contrive and
 " write two Letters to Monsieur *le Chefe*, then Ser- The Overt-
Acts; writing
to *le Chefe* to
procure the
French King's
Assistance in it.
 " vant and Confessor to the *French King*, to procure
 " (for himself and other false Traitors) of the said
 " *French King* Aid and Assistance against his said
 " Sovereign, in order to alter the true Religion esta-
 " blish'd in this Kingdom to the *Romish* Supersti-
 " tion, and subvert the Government of this King-
 " dom: And that afterwards at the same Day and
 " Place he did compose and write two other Letters
 " to the said *Monf. le Chefe*, to the same effect: And the
 " Indictment further sets forth, that afterwards the
 " same Day he caus'd the said Letters to be sent be-
 " yond Sea to the said Monsieur *le Chefe*: And that
 " the said *Edward Coleman* afterwards (*viz.*) the first
 " Day of *December*, in the said 27th Year of the
 " King, in the Parish of *St. Margaret* aforesaid, did
 " receive a Letter from the said Monsieur *le Chefe*,
 " in Answer to one of the aforesaid Letters; and in
 " the said Answer Aid and Assistance was promis'd
 " from the *French King*; and that the said *Edward*
 " *Coleman* did traiterously read over, peruse and con-
 " ceal the said Answer: And that the said *Edward*
 " *Coleman* afterwards (*viz.*) the 10th Day of *Decem-*
 " *ber*, in the said 27th Year of the King, at the Pa-
 " rish of *St. Margaret* aforesaid, did reveal his said
 " Treasons to Monsieur *Revigni*, then Envoy from
 " the said *French King* to his Majesty, and residing
 " in the said Parish of *St. Margaret* aforesaid, and
 " did traiterously move and excite the said Envoy
 " to partake in his said Treasons: And that he
 " did afterwards (*viz.*) the said tenth Day of *De-*
 " *cember*, write and send three other Letters to Sir
 " *Nicholas Throckmorton*, then residing in *France*, to
 " solicit the said Monsieur *le Chefe* to procure Aid
 " and Assistance of the *French King*, as aforesaid.
 " All which is laid to be against the King's Peace,
 " his Crown and Dignity, &c.

Mr. Recorder opened the Indictment.

Mr. Serj. Maynard open'd the general parts of the Evidence, and afterwards Mr. Attorney (Sir William Jones) opened the Evidence more particularly.

Sir Wm. Jones,
Attorn. General

After

The TRYAL of

After which Mr. Coleman said, It was hard he might not be allow'd Council, when Crimes were charg'd against him with such Skill and Advantage by great Men, and himself ignorant in these Matters; and hop'd his Lordship would be of Council for him, and not suffer him to be lost through his Ignorance in such Proceedings. He said, he observ'd the Premisses were strong and artificial, but he must deny the Conclusion; for he could safely and honestly say, he was not a Traitor.

The Chief Justice answer'd, he was a better Statesman than a Logician; for they never deny the Conclusion: That he needed no Council, because the Labour lay on the other side, who were to make out and prove their Charge; and that the Proof must be plain upon him, and then it would be in vain to deny the Conclusion.

The People violently prejudic'd against the Papist at this time.

Mr. Coleman said, another Thing that seem'd most dreadful was, the violent Prejudices against every Man in England, who was a Roman Catholick; in-somuch, that if one of that Persuasion, who was never so innocent, should appear at that Bar, Prejudice would so bias human Nature, that unless his Lordship lean'd extremely on the other side, Justice would hardly stand upright.

After some other interlocutory Passages between the Court and the Prisoner, Mr. Attorney desir'd to proceed, and call his Witnesse, and

Mr. Oates was sworn.

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Oates deposes, that he carried the Letters that Coleman wrote into France.

He depos'd, That Mr. Coleman entertain'd one John Keins in his House, who was Confessor to the Deponent and several others: That the Deponent went to Mr. Coleman's to visit Keins; and Keins telling Mr. Coleman, that the Deponent was going to St. Omers, Mr. Coleman said he would send a Letter by him, and he would leave it for him with Mr. Fenwick (the Procurator of the Jesuites in London :) That accordingly the Deponent had a Letter at Mr. Fenwick's, and carried it to St. Omers, and was at the opening of it, and read it: That it was a Letter of News, and call'd Mr. Coleman's Letter by the Fathers, but not subscrib'd by him: That Mr. Coleman desir'd the Fathers in the Letter to recommend him to his Kinsman Playford, and in the same Let-

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ter he call'd the King Tyrant, and said, that the Marriage between the Prince of *Orange* and the Lady *Mary*, the Duke of *York's* eldest Daughter, would prove the Traitor and Tyrant's Ruine.

That there was another Letter inclos'd in it to Father *le Chese*, which was superscrib'd by the same Hand, but subscrib'd by no body : That this Letter was written in *Latin* (the other was in *Englisch*) and Thanks was given *le Chese*, in the Name of the whole Society, for the ten thousand Pounds which was sent them into *England*, and assur'd him, it should be employ'd to the Intent for which it was paid : Now this was in Answer to a Letter sent by *le Chese*, which had this Instruction in it (*viz.*) That the ten thousand Pounds should be employed to cut off the King of *England* : This Letter from *le Chese* he also saw and read, and, as he remembred, it was dated in the Month of *August*.

L. C. J. To whom was this Letter from *le Chese* directed ?

Oates. To *Strange*, who was Provincial to the Society in *London*.

L. C. J. How came Mr. Coleman to answer it ?

Oates. *Strange* having hurt his Hand, Mr. Coleman wrote it by his Directions ; and I carried this Answer to *le Chese*, and it was wrote in the same Hand the Letter of News was, but was not subscrib'd : When I gave *le Chese* the Letter, he ask'd me, how a Gentleman did (by a *French* Name) whom I understood to be Mr. Coleman ? This Letter acknowledged the Receipt of the Letter from *le Chese*, and assur'd him, all Endeavours should be us'd to cut off the Protestant Religion Root and Branch : I saw the Letter at *St. Omers*.

L. C. J. How came you to see it ?

Oates. I had a Patent from them to be of the Consult.

Att. Gen. I desire he may give an Account of the Consult ; and how far Mr. Coleman was privy to the murdering of the King.

Oates. In the Month of *April*, O. S. there was a Consult of the Jesuites, held at the *White-Horse Tavern* (in the *Strand*) where having agreed to send Father *Cary* Procurator to *Rome*, they adjourn'd them-

Oates's Evidence of the Consult at the White-Horse Tavern.

The TRIAL of

themselves to several Clubs in Companies ; some met at *Wildbouse*, some at *Harcourt's Lodgings* in *Duke-street*, some in *Ireland's Lodgings* in *Russel-street*, and some in *Fenwick's Lodgings* in *Drury-lane* : And it was resolv'd, that *Pickering* and *Groves* should go on with the Design of Affassinating the King by shooting, &c. for which *Groves* was to have fifteen hundred Pounds, and *Pickering* (being a Religious) thirty thousand Masses. This Resolve was communicated to Mr. *Coleman* at *Wildbouse* in my Hearing ; and in several Letters Mr. *Coleman* has mention'd it, and particularly in a Letter to *Ireland*, which I saw and read, he desir'd the Duke might be trapan'd into this Plot to murder the King.

L. C. J. How do you know it was Mr. *Coleman's* Letter ?

Oates. Because I saw Mr. *Coleman* take Copies of the Instructions, and this Letter was the same Hand, and the same with the News Letter I have mention'd before.

Mr. *Just. Wild.* Did you hear Mr. *Coleman* say he agreed to the Design of affassinating the King by *Pickering* and *Groves* ?

Oates. I heard him say at *Wildbouse* he thought it was well contriv'd.

Att. Gen. Do you know of any Rebellion to be rais'd in *Ireland* ?

The Irish in the Conspiracy.

Oates. In the Month of *August* there was a Consult between the Jesuites and the *Benedictine Monks* at the *Savoy* ; and a Letter was produc'd, written by *Talbot*, the Titular Archbishop of *Dublin*, giving an Account, that the Pope's Legate, the Bishop of *Cassay*, had asserted the Pope's Right to the Kingdom of *Ireland* ; and that the *Irish* were ripe for Rebellion ; and that four Jesuites had contriv'd to dispatch the Duke of *Ormond* ; and Dr. *Fogarty* was present at the Consult, and it was agreed to send him to *Ireland* to poison the Duke, if the four Jesuites did not succeed : And Mr. *Coleman* came to this Consult in the *Savoy*, and was very forward to have *Fogarty* sent over to dispatch the Duke. And another Letter mention'd, that 40000 black Bills were provided to be sent to *Ireland* by the Popish Commissioners, for the Use of the Catholics there.

Mr. *Coleman*

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Mr. Coleman was the main Agent at this Consult, and a Week before this Consult I heard him tell *Fenwick*, that he had found a way to transmit the two hundred thousand Pounds for the carrying on the Rebellion in *Ireland*: He said it at *Fenwick's* Chamber in *Drury-lane*.

Att. Gen. Do you know any thing of transmitting Money to the *Russians* at *Windsor*?

Oates. The same Night the Consult was, *Dr. Fogarty* procur'd four *Russians*, and sent them to *Windsor*, as had been agreed; and the next Day there were eighty Pounds provided for them by *Harcourt*, the Rector of *London*, who acted for the Provincial in his Absence: And Mr. Coleman met this *Harcourt* at *Wild-houfe* (having first call'd at his Lodgings) and ask'd, what Care was taken for those four Gentlemen, that went the last Night to *Windsor*, and *Harcourt* told him eighty Pounds were provided, and the Messenger was there, who was to carry it; whereupon Mr. Coleman gave the Messenger a Guinea to hasten his Journey: I saw the Money lying before Mr. *Harcourt* upon the Table; the most part of it was in *Guineas*.

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Coleman privy to the Design of murdering the King at *Windsor*.

Recorder. Do you remember Mr. Coleman's Discourse with *Asbby*?

Oates. In *July* last, *Asbby* being come over from *White* the Provincial (who was then in *Flanders*) brought over Instructions to the Conspirators at *London*, to propose ten thousand Pounds to Sir *George Wakeman* to poison the King, in case *Pickering* and *Grove* did not kill him; and Mr. Coleman waited on Mr. *Asbby* (who was ill of the Gout) and read these Instructions, and copied them out, and transmitted them to several of the Conspirators; and Mr. Coleman said, he thought Sir *George Wakeman* would scarce take ten thousand Pounds, and thought five thousand Pounds more ought to be added to it, that they might be sure to have it done. This he said at the Provincial's Chamber at *Wild-houfe*, where Mr. *Asbby* lodg'd, 'till he went to the Bath.

To the Design of poisoning the King by Sir *Geor. Wakeman*

L. C. J. To what purpose should Coleman take Copies of these Instructions?

Oates. It was to send to the Conspirators, to encourage Contributions in *England*, by showing them

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what was done abroad ; and by this means some thousands of Pounds were rais'd here.

L. C. J. Did any one ask Mr. *Coleman*, why he took Copies of these Instructions ?

Oates. *Astby* said, he had best make haste, and communicate these things ; and Mr. *Coleman* answered, he would make haste with his Copies, and dispatch them away that Night.

Recorder. Was not Mr. *Coleman* to be one of the Secretaries of State ?

Coleman has a Commission to be Secretary of State.

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Oates. The Day after our Consult in April, O. S. I was at Mr. *Langborn's* Chamber in the Temple, and among several other Commissions (which we call'd Patents) I saw one for Mr. *Coleman*, sign'd by the General of the Society of *Jesus*, *Joannes Paulus D' Oliva* : I believe I have seen forty things in this Hand, and we all took it to be his, and knew the Seal, which had the Letters J. H. S. upon it. This Commission Mr. *Coleman* receiv'd and open'd at Mr. *Fenwick's* Chamber, when I was present, and he said, it was a very good Exchange.

L. C. J. Were you acquainted with Mr. *Langborn* ?

Oates. He had two Sons in *Spain*, from whom I brought Letters to their Father in November, 1677, and Mr. *Langborn* receiv'd me very kindly at his Chambers in the Temple on that Account, but was not willing any Jesuites should come to his House, because his Wife was a Protestant—— I was at his Chamber several times, and was order'd by the Provincial to carry him a Summary of the Results and Particulars of the Consults at the *White-horse* and at *Wild-house*.

L. C. J. When did you see the Commissions ?

Oates. In the Month of April, O. S. I heard they were come ; and having a Curiosity to see them, he shew'd them to me, knowing I was privy to their Concerns. I read the Letters, giving an Account of their being sent, at St. *Omers* in January before.

L. C. J. What time did you come over to the Consult ?

Oates. I receiv'd a Summons to come over to the Consult in April, and accordingly nine of us came over all Jesuites ?

Mr. Just.

Mr. Just. Dolben. Did not you say you came to Mr. Langborn's in November?

Oates. Yes: That was before I went to St. Omers.

Att. Gen. How many Priests and Jesuites have you known in England lately?

Oates. I have known Eightscore Secular Priests, and Fourscore Jesuites; and in the Catalogue I think there were Three Hundred and odd.

L. C. J. When did you see the Commissions at Mr. Langborn's?

Oates. That very Day I gave him an Account of the Consult, which I think was the last Day I ever saw him.

Att. Gen. Name those who came over with you from St. Omers.

Oates. As I remember, they were the Rector of Liege, Father Warren, Sir Thomas Preston, the Rector of Watton, Francis Williams, Sir John Warner, Father Clarges, one Pool a Monk, and I think I made the ninth.

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Coleman. This Witness, who is so extremely well acquainted with me now, and pretends to have such an Intimacy with me, in his Examination before the Council, told the King, he never saw me before: And I declare I never saw Mr. Oates but at that time.

Coleman objects, that Oates said before the Council he did not know him, and now deposes he was very intimate with him.

Oates. I said before the Council, I would not swear I had seen him before, because it was Candle Light, and I can't see a great way by Candle Light; tho' when I heard him speak, I could have sworn it was he, but it was not then my Business.

L. C. J. The Stress of the Objection lies not so much upon the seeing, but that you laid no more to his Charge at that time.

Oates. I did design to give no more than a general Information against Mr. Coleman then; for Prisoners may defeat the Witnesses, when they know the Circumstances of Time and Place before hand: Besides, I was so weak and tir'd, having been up two Nights taking of Prisoners, that I was not able to stand upon my Legs.

L. C. J. You here charge Mr. Coleman with so many desperate Practices against the King's Life, how came you not to mention them at the Council Table,

especially when they were about to dismiss Mr. Coleman, and let him go at large?

Oates. If I had apprehended that, I should have given a farther Account, but he was at that time committed to a Messenger, and two Days after sent to Newgate, and his Papers seiz'd: And when I was before the Council, I said, if Mr. Coleman's Papers were search'd, they would find Matter enough against him to hang him.

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Coleman. I appeal to Sir Thomas Doleman, if Mr Oates did not say he did not know me.

Sir Tho. Doleman. He said he had no Acquaintance with him, to the best of my Remembrance.

L. C. J. Was Mr. Coleman examin'd before Mr. Oates spoke?

Sir Tho. Doleman. Yes.

L. C. J. Mr. Oates, you said here, when you heard his Voice you knew him; why did you not say before the Council then, that you did know him?

Sir Rob. Southwell. Mr. Oates did say before the Council, that five of the fifteen thousand Pounds, which Sir George Wakeman was to have for poisoning the King, was paid by Mr. Coleman.

L. C. J. This answers much of that Objection, why he charg'd Mr. Coleman so slightly. For it seems he did charge Mr. Coleman with paying five of the fifteen thousand Pounds.

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Coleman. The Charge was so slight, that tho' the first Order was to send me to Newgate, Sir Robert Southwell came with Directions to the Messenger not to execute it.

Sir Rob. Southwell. There was a Warrant out on Sunday Night for Mr. Coleman and his Papers, and on Monday he surrender'd himself at Sir Jos. Williamson's House, and he did with great Indignation and Contempt hear these vile Things, as thinking himself innocent, and made so good a Discourse for himself, that tho' the Lords had fill'd up a Warrant to send him to Newgate, they thought fit to respite it, and he was only committed to a Messenger; but his Papers being read, some of them sounded so strangely, that they afterwards sign'd a Warrant to send him to Newgate.

Bedlow

Bedlow sworn.

Att. Gen. Have you seen or heard any thing of Mr. Coleman's Commission?

Bedlow. Sir Henry Tuckburne told me, that he brought a Commission from Rome for Mr. Coleman to be principal Secretary of State, and that there were Commissions for others: And I have carried over a large Packet of Letters from Mr. Coleman to *le Cbesse*; and brought Answers from *le Cbesse* and the *English* Monks at *Paris* about carrying on the Plot for destroying the King, and subverting the Government and the Protestant Religion.

Bedlow deposes he had carried Letters from Coleman to *le Cbesse*.

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L. C. J. Who was the Letter that *le Cbesse* wrote directed to?

Bedlow. The Packet was directed to Mr. Harcourt, but there was a Letter inclos'd, directed to Mr. Coleman; and I had another Packet of Mr. Harcourt, which I saw Mr. Coleman give him, and I deliver'd it to the *English* Monks at *Paris*; and they said I deserv'd to be well rewarded by the Pope and the Church; and that they would neglect their Design no longer than the next Summer, having all things ready to begin in *England*: I went with the Packet from the Monks to Mr. Coleman's House behind *Westminster* Abby with Mr. Harcourt; and after Mr. Harcourt had talk'd with Mr. Coleman, I was call'd in, and heard Mr. Coleman say, if he had a hundred Lives, and a Sea of Blood to carry on the Cause, he would spend it all to establish the Church of Rome in *England*; and if there were an hundred Heretical Kings to be deposed, he would see them all destroy'd.

Coleman. Did I ever see you in my Life?

Bedlow. In the Stone Gallery at *Somerset* House, when you came from a Consult, where were great Persons, which I am not to name here; (That would make the Bottom of your Plot tremble, if I should) you saw me then.

Mr. Bradley was sworn.

He depos'd, That on Sunday the 29th of September, having a Warrant from the Council to apprehend Mr. Coleman, and seize his Papers, he went to his House, and his Wife told him he was welcome to search, but Mr. Coleman was not at Home: That

Coleman's Letters and Papers provid.

The TRYAL of

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the Deponent found Papers in several parts of the House, and put them up in Bags; and he found a Deal Box with Papers nail'd down, in a private Corner behind the Chimney in Mr. Coleman's Chamber: That he seal'd up the Box and Bags, and brought them all to the Council Table.

Then a Letter was produc'd, which Sir Thomas Doleman depos'd, was one of the Papers which Bradley brought to the Council in the Deal Box.

Att. Gen. We shall prove it once for all, that all these Papers were of his Hand writing.

Boatman, Mr. Coleman's Gentleman, was sworn.

Att. Gen. Look upon those Papers, and turn them over.

Boatman, I believe them all to be Mr. Coleman's Hand; and a Packet of Letters was sent Mr. Coleman, from beyond Sea, two or three Days after he was taken.

L. C. J. Did you receive Mr. *le Chefe's* Letters for Mr. Coleman?

Boatman. Yes; but I never wrote any for him to Mr. *le Chefe*: There was a large Book my Master did use to enter his Letters in, and his News: I saw it last Saturday, but can't tell where it is now.

Att. Gen. Did not he write and receive Letters from beyond Sea, 'till he was taken up?

Boatman. He had usually Letters every Post from beyond Sea.

Coleman. There are Letters from the Hague, Brussels, France and Rome, before the Council; which are all the Letters I receiv'd.

Cattaway was sworn.

He depos'd, That the Letters were Mr. Coleman's Hand-Writing, he believ'd.

Sir Philip Lloyd also depos'd, That the Letter they were about to read Mr. Coleman own'd to be his Hand-Writing.

Mr. Coleman's
first long Letter
to *le Chefe* of the
State of Affairs
in England.

Then a Letter dated the 29th of September, 1675, unsubscrib'd, was read; importing, "That Mr. Coleman acknowledg'd the Favour of Father St. Germain, in recommending him to Monsr. *le Chefe* for a Correspondent: He acquaints him with the Correspondence that was between himself and
" Mr. Fer-

" Mr. *Ferryer*, (Predecessor to *le Chefe*;) And tells
 " him, that Correspondence first begun when the
 " King sent a Troop of Horse-Guards into the Ser-
 " vice of the *French King* under the Lord *Durass*;
 " That Sir *William Throckmorton* being an intimate
 " Acquaintance of Mr. *Coleman's*, and an Officer in
 " that Troop, he had an Opportunity by him to
 " write and address himself to Mr. *Ferryer* fre-
 " quently: That the first Thing of Importance he
 " offer'd to *Ferryer's* Consideration was in Autumn,
 " 1673, soon after the Revocation of the King's
 " Declaration for Liberty of Conscience; (to which
 " he imputed all the Miseries of the Catholics:)
 " That he then inculcated the Danger the Catholick
 " Religion and the *French King's* Interest would be
 " in at the next meeting of the Parliament, and
 " particularly by a Peace with *Holland*: But that
 " what he offer'd was then look'd upon as a zealous
 " Mistake; the *English* and *French* Embassadors,
 " and King *Charles* himself, being of Opinion those
 " Apprehensions were groundless: That when
 " Things fell out according to Mr. *Coleman's* Ex-
 " pectations, Father *Ferryer* desir'd a Continuance
 " of the Correspondence by Sir *William Throck-*
 " *morton*, which Mr. *Coleman* was willing to comply
 " with, as knowing that the Interest of the King,
 " and (particularly) of his immediate Master the
 " Duke, and his most Christian Majesty, were inse-
 " parable: That then he shew'd Mr. *Ferryer*, that
 " as we had been forc'd from our active Alliance
 " with *France* the last Year, we should certainly be
 " forc'd from our Neutrality at the next Meeting of
 " the Parliament: That Mr. *Ferryer* having com-
 " municated this Matter to the *French King*, he
 " gave him Orders to signify to his Royal High-
 " ness, that he esteem'd both their Interests as one;
 " and that if his Royal Highness would endeavour
 " to dissolve this Parliament, his most Christian
 " Majesty would assist him with his Power and
 " Purse to get a new one for their Purpose; and if
 " his Royal Highness would propose what he
 " thought conducive to his own Advantage, or the
 " Advantage of Religion, his most Christian Ma-
 " jesty would do what he could to advance both, or
 " either.

“ either. These Offers Sir *Will. Throckmorton* sent
 “ Mr. *Coleman*, June 2. 1674 ; which having com-
 “ municated to his Royal Highness, he was com-
 “ manded to return an Answer to them, which he
 “ did the 29th of the same Month ; importing,
 “ that his Royal Highness conceiv’d their Interests
 “ to be both one ; and that the present Parliament
 “ were very dangerous to them, and therefore it
 “ was necessary they should be dissolv’d ; and if
 “ the *French King* would make the same Offer of
 “ his Purse to the King of *England* he had done to
 “ his Royal Highness, he believ’d he might suc-
 “ ceed, with the Assistance they should give him
 “ here ; and if this Parliament were dissolv’d,
 “ there would be no great Difficulty in getting ano-
 “ ther, that would be more useful.

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“ Mr. *Ferryer* seem’d sensible of the Advantage all
 “ Parties would reap by this Proposal ; but hap-
 “ pening to fall sick, had not an Opportunity of
 “ waiting on the *French King* for a considerable time ;
 “ but as soon as he was able, he acquainted the
 “ *French King* with it, and wrote to the Duke him-
 “ self, as he did to Mr. *Coleman*, on the 15th of
 “ September, 1674, and sent his Letters by Sir *Will.*
 “ *Throckmorton*, who came Express on that Errand ;
 “ and assur’d his Royal Highness, that Monsieur
 “ *Rouvigny* had Orders to treat with him, as to the
 “ Matter of Money, and observe his Directions as
 “ to that ; but as to any Proposition about Reli-
 “ gion, he was desir’d to communicate it to Father
 “ *Ferryer*, or Mons. *Pomponne* : Hereupon the Duke
 “ expected daily, when Mons. *Rouvigny* should speak
 “ to him of the Matter ; and on the 29th of Sep-
 “ tember (being the Night before the King and
 “ Duke went to *New-Market*) he told his Royal
 “ Highness, that he was commanded by his Master
 “ to give him the most firm Assurance of his Friend-
 “ ship, but made no mention of any particular Or-
 “ ders, relating to Father *Ferryer*’s Letter : And
 “ that Father soon after dying, the Duke gave over
 “ all further Thoughts of prosecuting that Project :
 “ That Mr. *Coleman* believ’d Mr. *Rouvigny* was in
 “ Expectation, they could have obtain’d the Dissol-
 “ ution of the Parliament themselves, they having
 “ procur’d

" procur'd it to be prorogu'd to the 13th of *April*,
 " and was willing to save his Master's Money :
 " That he had several Discourses with *Monf. Rou-*
 " *vigny* concerning his Master's advancing 300000 *l.*
 " and did say to him he wish'd the *French King*
 " would give them leave to offer it to King *Charles* ;
 " and shew'd him, that a Peace would certainly
 " follow a Dissolution, (which *Monf. Rouvigny* agreed)
 " and that it would save his most Christian Ma-
 " jesty ten times the Sum they ask'd : That he
 " mention'd this also to *Mr. Pomponne*, who seem'd
 " to approve it, but said, his most Christian Ma-
 " jesty could very ill spare such a Sum : That the
 " Duke did not indeed appear in this Matter him-
 " self, having such ill Success before, when the
 " thing came into *Rouvigny's* Hands ; yet that he
 " (*Mr. Coleman*) continued to press the Dissolution
 " of a Parliament, as believing all Prorogations
 " did but strengthen the opposite Party ; for the
 " longer they were kept off, the King's Necessities
 " increas'd, and consequently their Power would
 " be the greater when they met, if ever they did :
 " That he press'd for a Dissolution until *February*
 " last, but then their Circumstances were so totally
 " chang'd, that they were obliged to be as much
 " for the Parliament's sitting, as they were before
 " against it : The Ministry, who before were their
 " Friends, having rendred themselves obnoxious
 " to the Parliament, had no way to ingratiate them-
 " selves with them against their sitting, but by ap-
 " pearing zealous against Popery, and putting the
 " Penal Laws against the Catholics in Execution :
 " This being a Proceeding level'd so directly a-
 " gainst the Duke, and by People whom he had
 " advanc'd, and who had hitherto profess'd so
 " much Duty to him, put him upon taking new
 " Measures : He saw that the Ministry would sacri-
 " fice *France*, Religion, and his Royal Highness
 " too to their Interest ; and he saw no Expedient
 " to stop them in their Career of Persecution and
 " destructive Counsels, but a Parliament ; for they
 " had such a rooted Dislike to that Ministry, that
 " they would run counter to whatever Measures the
 " Ministry seem'd inclin'd to, and be as little for
 " " Perse-

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How the penal
 Laws came to
 be put in Execu-
 tion so severely
 against the Pa-
 pists in King
Charles's Reign.

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" Persecution then, as they had been for Popery
 " before : And he assur'd Mons. *Rouvigny* (as he
 " would testify) that the next Sessions would do
 " neither of them any Hurt, tho' they could not
 " expect much Good from them, wanting those
 " Sums the *Dutch* and *Spaniards* employ'd in making
 " Friends : That indeed the Lord-Treasurer, Lord-
 " Keeper, the Bishops, and such as call'd them-
 " selves Old Cavaliers, were against them to a
 " Man, looking upon the Duke as Patron of *France*,
 " and the Catholick Religion : But then they
 " had the Presbyterians, Independents, and other
 " Sects, who were as much afraid of Persecution,
 " as themselves : And the Enemies of the Ministry,
 " and particularly of the Lord-Treasurer, (who
 " was grown almost sole Manager) these they had
 " on their side, and did not fear preventing what
 " was design'd against them, and rendering the
 " Sessions ineffectual, at least to their End, tho'
 " they might not be able to compass their own.
 " And he confesses he did communicate these
 " things to Mons. *Rouvigny*, and shamefully beg his
 " Master's Help, and that he would assist them but
 " with 20000 *l.* and with that Supply he would
 " have made it evident to the Duke, that he should
 " not have miss'd of such an Interest, as that he
 " should have been restor'd to all his Places : That
 " he was upon the point of having the Duke's
 " Consent to propose it to the Parliament, that
 " they would address the King to put the Fleet in-
 " to his Hands, and had he had Money to have
 " managed his Interest, he should have carried his
 " point, but the Duke weighing the Consequences
 " if he should miss in such an Undertaking, he
 " thought fit not to venture then : That he took
 " the Case to be much the same, as it was the last
 " Sessions ; and if they could advance the Duke's
 " Interest one Step, they should put him out of
 " the reach of Chance for ever ; for he made such
 " a Figure already, that cautious Men did not care
 " to act against him ; and if they could gain a
 " little Addition of Power, all would come over
 " to him, as the only steady Center of our Govern-
 " ment, the Catholicks would be at Rest, and his
 " most

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" most Christian Majesty's Interest would be secured
" in *England*.

" In order to this, they had two great Designs
" in View the next Parliament ; one to put them
" upon addressing the King to put the Fleet into
" his Royal Highness's Hands, and the other to
" get an Act for Liberty of Conscience ; and if the
" French King would advance but 20000 *l*. he would
" be sacrificed, if they did not succeed : That he
" did not think *Monf. Rouvigny* would be so zealous
" in these Points, as a good Catholick, because
" they would give the greatest Blow to the Pro-
" testant Religion here, that ever it receiv'd since
" its Birth : That if these Steps were taken, then
" a Dissolution might prove advantageous ; other-
" wise they should but change Masters (*A Parliament*
" *for Ministers*) and continue under the same Bon-
" dage as before : But if the Duke were once set
" above them, they should not fear the Ministry,
" they should be establish'd beyond Opposition,
" every one would come over to them, and wor-
" ship the Rising Sun.

" That having thus represented their Case, he
" hop'd his Reverence would lay it to Heart, and
" afford them what Help he could both with the
" King of Heaven by his Holy Prayers, and with
" his most Christian Majesty ; (whose Zeal and
" Piety gave him the greatest Hopes) And if ever
" his Majesty's Affairs or his own could want the
" Service of so inconsiderable a Creature, none
" would be readier to obey their Commands, or
" more faithful in the Execution, than, &c.

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Then a Letter in *French* from *le Chefe*, dated *Obob.*
23. 1675, being an Answer to the former, was read
in Court, first in *French*, and afterwards in *English*,
as follows.

S I R,

The Letter which you gave your self the Trouble to
write to me came to my Hands but last Night. I read it
with great Satisfaction ; and I assure you, that its Length
did not make it seem tedious. I should be very glad on
my part to assist in seconding your good Intentions ; I
will

*Le Chefe's Let-
ter to Coleman in
Answer to Cole-
man's long Let-
ter.*

The TRYAL of

will consider of the Means to effect it; and when I am better inform'd than I am as yet, I will give you an Account, to the end I may hold Intelligence with you, as you did with my Predecessor; I desire you to believe that I will never fail as to my good Will for the Service of your Master, whom I honour as he deserves, and that it is with great Truth, that I am, &c.

D. L. C.

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Then a Declaration was read, which Mr. Coleman had prepar'd in the Name of his Majesty, containing Reasons for dissolving the Parliament, and calling a new one.

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After this another Letter was read, which Mr. Coleman had prepar'd in the Name of the Duke to *Monf. le Chef*, and which Sir Philip Lloyd depos'd, that Mr. Coleman confess'd to a Committee of Lords in *Newgate*, he prepar'd without the Duke's Privy, and that when he shew'd it the Duke, he was angry and rejected it.

Another Letter
prepar'd by Cole-
man in the
Name of the
Duke.

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" This Letter acknowledges the French King's
" Kindness in offering his Purse and Assistance
" against the Designs of the Duke's Enemies; and
" tells him he has the same Opinion of the Parlia-
" ment and the Lord *Arlington*, that the French
" King had (*viz.*) That they were not in the In-
" terest of the King his Brother, of his Catholick
" Majesty, or himself; and that it was necessary
" they should use their joint Credit to prevent
" their ill Designs: And then he repeats what Steps
" had been taken in Father *Ferryer's* Time, (as are
" mention'd in Mr. Coleman's first Letter) and adds,
" that having expected the Effects of those Offers
" made him by the French King (in Father *Ferryer's*
" Time) to this very Hour, and finding nothing
" done, and seeing on the other Hand that my Lord
" *Arlington* and several others endeavour'd by a
" thousand Deceits to break the good Intelligence
" which was between the King his Brother, his
" most Christian Majesty, and himself, and to a-
" buse them all three, he thought fit to advertise
" him of it, and desire his Friendship and Assis-
" tance to prevent their ill Designs: As to any thing
" farther he left it to Sir *William Throckmorton* and
" Coleman,

“ Coleman, to inform him of the true Condition of
 “ England; that they were firmly in his Interests,
 “ and he might trust them without any Appre-
 “ hension.

Another Letter from Mr. Coleman to Monf. le Chese was read; wherein Mr. Coleman mentions the Letter he sent the 29th of September, and tells him, the Parliament drawing on, he had sent him a Cypher, which he should write in, when he had any thing of Importance; and when any thing was to be imparted, that he did not think fit to trust to a Cypher, he should write it in Juice of Lemon between the Lines: He goes on, and has these Expressions, *We have here a mighty Work upon our Hands, no less than the Conversion of three Kingdoms, and by that perhaps the utter subduing of a pestilent Heresy, which has domineer'd over a great part of this Northern World a long time: There never was such Hopes of Success since the Death of our Queen Mary as now in our Days, when God has given us a Prince, who is become (may I say a Miracle) zealous of being the Author and Instrument of so glorious a Work; and that which we rely on, next to Providence and the Favour of my Master the Duke, is the mighty Mind of his most Christian Majesty, whose generous Soul inclines him to great Undertakings.* Then he goes on and shows, That they were a little unhappy in having Monf. Rowigny his Majesty's Minister at this Court, in that they dare not communicate to him the most material Part of their Design (i. e. the Business of Religion, Rowigny being a Protestant:) That had he been a Minister, who would have taken their Case to Heart, and represented it justly to his most Christian Majesty, he did not doubt he would have assisted them with such a Supply of Money as would have put their mutual Interests out of danger for the time to come: But wanting those Advantages, he was afraid they should lose ground the next Sessions, rather than gain any Thing.

Mr. Attorney having concluded his Evidence, Mr. Coleman desir'd Mr. Oates might be ask'd, what Days of the Months of April or May he was with him?

Oates.

The TRYAL of

Oates. It was within a Day or two, or three, after the Consult; you came to the Provincial's Chamber, and *Mico*, and *Strange* the old Provincial, and *Keins* your Companion, were there.

Coleman. What Day in *August* do you say I was at the *Savoy*?

Oates. I cannot charge my Memory with the particular Day of the Month, but I believe it was about the 21st of *August*, O. S.

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L. C. J. He charges you expressly with being at *Wild-house* in *August*, when the eighty Pounds were sent to the *Affassines* at *Windsor*, and that you gave a Guinea to expedite the Matter, but it is hard for a Man to be precise to the Day of the Month.

Coleman. I never saw either of the Witnesses 'till I was before the Council; and as to their Testimony they do not swear to the same Fact.

L. C. J. If one swears to the poisoning, and the other to the Design of shooting or stabbing the King, these are but two Ways of effecting the same Thing (*viz.*) the King's Death; and then there is your own Undertaking in the Letter under your Hand.

Coleman. There are very extravagant Expressions in the Letter, but I hope there are Expressions in it that shew I had no Design to kill the King.

L. C. J. No: Your Design was for the Conversion of three Kingdoms, and therefore you press the King of *France* to use his Power, Aid and Assistance to subvert our Religion, which is the Thing you are charg'd with.

Coleman. Consider the Contexture and Connexion of Things, and you will find my Design to be to make the King and the Duke as great as could be: And it cannot be imagin'd, that the Duke would employ any Money (which was the Thing I solicited for) to the Prejudice of the King; and I hope neither the Law of *England*, or the Jury, will construe my Undertakings to be treasonable: How can what was design'd for the Interest of the King and Duke be Treason?

L. C. J. Might not you use the Duke of *York's* Name for a Colour to drive on the Catholick Cause? you thought to get 200000 *l.* Advance Money and a

Pension

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EDWARD COLEMAN, Gent. An. 1678.

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Pension for yourself, and to be made Secretary of State hereafter. If you will make any Defence, call your Witnesſes; but for theſe inconſequential Diſcourſes, they ſignify nothing.

Then Mr. Coleman demanded of Mr. Boatman, if he was not in *Warwick ſhire* in *Auguſt*.

Boatman. He was there all *Auguſt* to the beſt of my Remembrance, but I am not certain what time he came to *London*.

Coleman. I have no more Witneſſes, and have nothing further to ſay.

Then Mr. Solicitor, Sir *Francis Winnington*, ſum'd up the Evidence for the King; and as to Mr. Coleman's Defence, in which he ſays his Deſign was to make his Maſteſty great, he anſwer'd, that the contrary was manifeſt; for the Jeſuits, who lov'd Tyranny, always adhered to thoſe Perſons, who were greateſt in Power: That when the Houſe of *Auſtria* were in their Greatneſs, and like to arrive at univerſal Monarchy, then the Jeſuits adher'd to that Houſe; but ſince the *French* King had grown powerful, they had declin'd the Inter'eſt of the *Auſtrian* Family, and promoted the Counſels of *France*, believing that King would become the univerſal Monarch.

Mr. Sol. ſum'd up
the Evidence.
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My Lord Chief Juſtice in his Directions to the Jury told them, That it was plain from Mr. Coleman's Letters, that he intended to bring in the *Roman* Catholick, and to ſubvert the Proteſtant Religion; and that which was by Conſequence intended was the killing the King, as the moſt likely means to introduce that: That another way his Letters plainly convicted him of bringing in Popery was by a foreign Power: And as for the way Mr. Coleman pretended he deſign'd to introduce his Religion, (*viz.*) by procuring Liberty of Conſcience, that he knew was very unlikely to produce that Effect; for tho' ſome had ſo little Wit as to turn Fanaticks, he ſaw very few, that when left to themſelves would turn Papiſts: That for Mr. Coleman, who was bred a Proteſtant, (his Father being a Miniſter in *Suffolk*) to turn Papiſt, being a Man of thoſe Parts, as he appear'd to be, he look'd upon that Circumſtance as an Argument againſt him, and

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The Ch. Juſtice's Directions
to the Jury.

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Coleman is convicted.

Receives Sentence the Day following.

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Before it is pronounced, the Ch. Justice makes a Speech to the Prisoner.

Shews him, that he who brings in Popery, consequently brings in a foreign Authority.

He who enters on an ill Action answerable for all the Consequences.

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and that he was moved by some By-ends and secular Motives — He believ'd his Pension was his Conscience, and his Secretary's Place his Bait — Then he proceeded to inveigh against the bloody and inhuman Principles of those of the Prisoner's Religion : And as to the Evidence that had been given *viva voce*, as to his Design of killing the King, he left it entirely to the Jury, without making any Observations upon it.

The Jury, after a short Recess, brought the Prisoner in Guilty.

The Day following, being the 28th of November, Mr. Coleman was brought again to the Bar to receive his Sentence.

Before it was pronounced, the Lord Chief Justice made a Speech, in which he told Mr. Coleman he would not have him go out of the World under a Mistake, and think himself innocent ; for it was apparent from his own Letters (waving the Testimony of the two Witnesses) that he was guilty of contriving and conspiring the Destruction of the Protestant Religion, and to bring in Popery, and that by the Aid and Assistance of a foreign Power : That he who subverts the Protestant Religion here, by Consequence brings in a foreign Authority, and does an Act in Derogation of the Crown, and in Diminution of the King's Supremacy, and endeavours to bring us under a foreign Dominion (*the Pope*.) — And tho' he might intend to bring in Popery by procuring a Dissolution of the Parliament, and obtaining Liberty of Conscience, and such innocent Ways, it was greatly to be feared other Methods would have been taken, [if those fail'd ; (at least by his Confederates, if not by him) And he that enters upon an unlawful Act is guilty of all the Consequences that attend it, tho' he might not design them — Then he exhorts the Prisoner to be penitent, and disclose the whole Plot, bids him not be deluded with fond Hopes of having his Sentence respited : That he should not trust to it, for they might flatter him to stop his Mouth 'till they had stop'd his Breath, and he doubted he would find that to be the Event — He again presses him not to be deceiv'd with the Expectation of

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of a Pardon ; for the Nation was at that time in such Disorders, and the People so alarm'd with secret Murders, or daily Outrages, that though the King, who was merciful to a Fault, should be inclin'd that way, he verily believ'd both Houses of Parliament would interpose between that and him : That there was nothing could save him, he must assuredly die, and that suddenly.

Shows him, that there was no Hopes of Pardon, the Nation was so alarm'd.

Then the Chief Justice pronounc'd Sentence on

Mr. Coleman as a Traitor.

Mr. Coleman thank'd his Lordship for his charitable Advice : He acknowledg'd, that Confession was extremely necessary to a dying Man ; but the Confession he suppos'd his Lordship meant, was of the Crimes he was condemn'd for, (*viz.*) a malicious contriving, &c. but he renounc'd all the Mercy that God could shew him, if he had not discover'd already to the House of Commons all that he knew in this Business : That he never made or receiv'd, or ever heard of any Proposition towards invading the King's Life, his Crown, or Dignity, or to make any Invasion or Disturbance to introduce any new Government, or to bring in Popery by Violence or Force : That 'tis possible he might be mistaken in his Opinion, that Popery would come in with Liberty of Conscience, but that he thought Christians ought to wish all People of the Religion they were themselves, if they were in earnest : That he should not now dispute the evil Principles with which his Lordship charg'd those of the Church of Rome, but if he thought them guilty of such things, he should not be of them : He confess'd he had had all the fair Play imaginable ; but as to any Act of his, so far as Acts require Intention to make them Acts, as all human Acts do, he was innocent of any of the Crimes he stood charg'd with : As for intending and endeavouring to bring in the Religion of the Church of Rome by the Aid and Assistance of the King of France, he never intended or meant by that Aid and Assistance any Force in the World, but such Aids and Assistances as might procure them Liberty of Conscience.

Mr. Coleman makes a Speech in Answer to the Ch. Justice's.

Denies any Design against the King's Life, or to subvert the Government.

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The TRYAL of

Afterwards Mr. Coleman desir'd his Wife and Friends might come to him; which was granted, and he was remanded to *Newgate*.

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The Tryal of WILLIAM IRELAND, THOMAS PICKERING, JOHN GROVE, THOMAS WHITE *alias* WHITEBREAD, and JOHN FENWICK, for High-Treason, at the Sessions-House in the Old Bailey, London, the seventeenth of December, 30 Car. II. 1678.

Page 118.
The Indictment
for High Treason,
in conspiring to assassinate the King,
&c.

THE Indictment sets forth, " That the Prisoners, not having the Fear of God in their Hearts, or weighing the Duty of their Allegiance, &c. but intending to disturb the Peace of the Kingdom, and subvert the Religion establish'd, &c. did on the 24th Day of April, in the thirtieth Year of the King, at the Parish of St. Giles in the Fields, in Com. Midd. traiterously Compass and Imagine to depose the said King, and put him to Death, and raise a Rebellion, &c. And to bring their said treasonable Designs to Effect, they the said Prisoners, together with other false Traitors unknown, did on the said 24th Day of April, in the Parish and County aforesaid, traiterously assemble themselves together, and then and there did consult and agree to put the said King to Death, and alter the Religion establish'd, and to bring in the *Romish* Superstition: And to effect the same, they did afterwards (viz.) at the Day and Place aforesaid, traiterously consult and agree, that they the said Thomas Pickering and John Grove should kill and murder the said King: And that they the said White, Ireland, Fenwick, and other false Traitors unknown, should perform a certain Number of Masses for the Soul of the said Pickering, and should pay to the said Grove a certain Sum of Money: And that thereupon the said Pickering

" and

" and *Grove* did undertake and promise to the said
 " other Traitors, that they would murder the King :
 " And that all the aforesaid Prisoners did, at the
 " Day and Place aforesaid, plight their Faith to
 " each other, and promise upon the Sacrament to
 " conceal, and not to divulge their said Treas-
 " sons : And that the said *Pickering* and *Grove* at the
 " Day and Place aforesaid did traiteroously procure
 " Arms, (viz.) Muskets, Pistols, Swords, Daggers,
 " &c. in order to kill the said King : And did
 " at the Day and Place aforesaid, and at divers
 " other Times and Places lie in wait, and endea-
 " vour to kill their said Sovereign Lord the King :
 " And that the said *White*, *Ireland*, and *Fenwick* did
 " at the Day and Place aforesaid perswade and ex-
 " cite four other Persons unknown to kill and
 " murder their said Sovereign Lord the King, against
 " the Duty of their Allegiance, the King's Peace,
 " &c.

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To which Indictment the Prisoners severally
 pleaded *Not Guilty*.

The Jurors being call'd, and the Prisoners chal-
 lenging none of them, the following Gentlemen
 were sworn, viz.

Sir William Roberts, Bar.
 Sir Philip Matthews, Bar.
 Sir Charles Lee, Kut.
 Edward Wilford,
 John Foster,
 Joshua Galliard,

John Byfield,
 Thomas Eggesfeld,
 Thomas Johnson,
 John Pulford,
 Thomas Earnesby, Esqrs.
 Richard Wheeler, Gent.

The Jury being charg'd with the Prisoners, Sir
Creswel Levinz open'd the Indictment.

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Mr. Serj. *Baldwyn* and Mr. *Finch* open'd the Charge
 more fully, and shew'd the Nature and Course of
 the Evidence : Then the Witnesses were call'd, and
 first

Page 141.

Titus Oates was sworn.

Mr. Serj. *Baldwyn*. Pray Mr. *Oates* declare to the
 Court what Design there was of killing his Ma-
 jesty, and by whom.

Page 142.

Mr. *Oates*. In December last the Prisoner *Whitebread*
 was made Provincial of the Order of the Jesuits

*Oates's Evi-
 dence of the
 Popish Plot.*

The *TRIAL* of

by the General of the Jesuits at *Rome*, after which *Whitebread* order'd *Conyers* a Jesuit to preach at *St. Omers* on *St. Thomas a Canterbury's Day*; which he did, and inveigh'd against the Oaths of Supremacy and Allegiance, as Antichristian and Devilish. In *January* *Whitebread* wrote Letters directed to *Father Asby* at *St. Omers*, intimating a Design of assassinating the King: And afterwards *Whitebread*, being at *London*, summon'd several Jesuits to appear at a Consult to be held in *London* the 24th of *April*, O. S. Upon which Summons nine went over from *St. Omers*, the Rector of *Liege*, *Sir Thomas Preston*, *Marsh* the Rector of *Ghent*, *Williams* Rector of *Wotton*, one *Sir John Warner* and two or three more; and we were order'd to keep our selves close, lest the Design should be suspected: Accordingly we did appear at the Consult the 24th of *April*, O. S. The Consult was begun at the *White-Horse Tavern* in the *Strand*, and there they met in several Rooms, and when a new Set came in, those that were there before retired: And *John Cary* was appointed to go their Procurator to *Rome*: From the *White-Horse* they adjourn'd into several Colloquies, or little Meetings: One of them at *Mr. Sanders's House*, butting upon *Wildhouse*; a second at *Mr. Ireland's Lodging* in *Russel-street*; a third was at *Mr. Harcourt's Lodging*; and a fourth was at *Mr. Grove's House*. After they had debated the State of Religion and the King's Death, *Mico*, Secretary to the Society, and the Provincial's Companion, by their Order drew up this Resolve, (viz.) That *Pickering* and *Grove* should go on in their Attempt to kill the King, and that *Grove* should have 1500*l.* and *Pickering* 30000 *Masses* as a Reward.

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Jury. We desire he may be ask'd, where he saw them sign it?

Oates. *Whitebread* sign'd it at that part of the Consult, that was held at his Chamber; and so *Ireland* and *Fenwick* at their respective Chambers. I carried it from one Company to another, and saw them sign it: And soon after the Consult I return'd to *St. Omers*.

In *May* came over *Whitebread*, *Cary* and *Mico* to *St. Omers*, and having given an Account how the Plot pro-

proceeded in *England*, *Whitebread* order'd me to come for *England*, and kill *Dr. Tongue* a Divine, who had translated a Book out of *French*, call'd the *Jesuits Morals*. The 13th of *June*, O. S. I left *St. Omers*, and the 15th arriv'd at *Dover*, where I met *Fenwick*, who was come thither to send some Lads to *St. Omers*. We came for *London* together, and by the Way the Coach was search'd, and the Searchers took a Box of *Fenwick's* full of Beads, Crucifixes, Images, and such Trumpery : And *Fenwick* said, if they had search'd his Pockets, they had found such Letters as might have cost him his Life. After we had been in *London* some Days, one *Asbby* came from *St. Omers*, and brought Instructions from *Whitebread*, 1. That 10000 *l.* should be propos'd to *Sir George Wakeman* to poison the King. 2. That the Bishop of *Hersford* should be murder'd ; as also *Dr. Stillingfleet* : But that *Pickering* and *Grove* should go on with their Design of killing the King still.

Sir George Wakeman refus'd the 10000 *l.* as being too little ; and *Whitebread* wrote Word, they should offer 5000 *l.* more, which was accepted by *Sir George* ; at which *Whitebread* express'd Abundance of Joy in a Letter I saw of his : And 5000 *l.* of the Money was paid to *Sir George Wakeman* by *Mr. Coleman*, or his Order.

In *August* following, there was a Consult between the *Jesuits* and *Benedictines* at *Wildbouse* ——— where was the Prisoner *Fenwick*, and one *Harcourt* : And *Fogarty* recommended four *Russians* to them to kill the King, and they accepted them, and eighty Pounds were sent after these Assassines the next Day, and *Coleman* gave the Messenger, who carried it, a Guinea for Expedition.

In the same Month *Whitebread* sent other Instructions to the said *William Harcourt*, Rector of *London*, to foment a Rebellion among the discontented *Scots* ; and the 6th of *August* *Harcourt* sent down *Moor* and *Sanders* into *Scotland*, and sent down some to preach among the *Presbyterians*, and to insinuate the Danger they were in from the *Episcopal Tyranny*.

L. C. J. Are you sure *Pickering* and *Grove* accepted of the Terms proposed to them to kill the King ?

The Conspiracy carried on in Scotland.

Page 144.

Sir Wm. Scroggs.

The TRYAL of

Oates. Yes, my Lord ; it was at Mr. *Whitebread's* Lodgings then : As for *Grove* he did indeed attend at that time on *Fenwick* at his Chamber, but after the Consult was over, he came to Mr. *Whitebread's* Lodgings, and took the Sacrament, and the Oaths of Secrecy upon it, and did accept it, and agree to it.

Mr. Finch. What do you know of any Attempt to kill the King in St. James's Park ?

Oates. I saw *Pickering* and *Grove* walking in the Park several times with their screw'd Pistols, and they had Silver-Bullets, and *Grove* would have had the Bullets champ'd, lest they should not prove mortal ; it was in the Months of *May* and *June* that I saw them.

Whitebread. Then was *Oates* actually at St. Omers.

Sir Chr. Levinz. Do you know any thing of *Pickering's* doing Penance ?

Oates. In *March* last *Pickering* follow'd the King, but durst not fire, tho' he had a fair Opportunity, the Flint of his Pistol being loose ; and he underwent a Penance for his Negligence, and was chidden, and had twenty or thirty Strokes by way of Discipline : This I discover'd by some Letters I saw from Mr. *Whitebread*.

Mr. Serj. Baldwin. Do you know how the Russians proceeded at *Windfor* ?

Oates. No ; for in the Beginning of *September* one *Beddingfield* wrote *Whitebread* Word, that I had discover'd the thing to the King, (and indeed another Gentleman had been with the King from me) And when I went to the Provincial's Chamber, he upbraided me with discovering it ; and tho' I asserted my Innocency, he beat and revil'd me for it, and commanded me to go beyond Sea again, and I was afraid of something worse, for they assaulted me in my Lodging.

Fenwick. Are you sure I was by at *Harcourt's* Chamber, when you say the Money was sent to the Russians at *Windfor* ?

Oates. Yes you were.

L. C. J. How many sign'd the Resolve for *Grove* and *Pickering* to kill the King ?

Oates.

Oates. There were *Whitebread*, *Fenwick*, and *Ireland*, and at least forty sign'd it.

L. C. J. Were *Ireland* and *Fenwick* present, when *Mico* drew it up?

Oates. No: After it was drawn up and sign'd by *Mr. Whitebread* and those of the Consult at his Chamber, I carried it to them the same Day to their several Consults: And it was sign'd also by *Pickering* and *Grove* afterwards at the Provincial's Chamber, just before Mass was said, and the Oath of Secrecy taken: (*Whitebread* gave the Oath to me, and to all the rest.)

Whitebread. I am in a very weak and doubtful Condition as to my Health, and therefore should be loth to say any thing that is not true: But I may boldly say in the sight of Almighty God, that there have not been three true Words spoken by this Witness.

L. C. J. You have a Religion that can give Dispensations for Oaths, Sacraments, Protestations and Falshoods.

Oates. My Lord, this *Whitebread* has an Authority from *Rome* to grant Military Commissions, and here are the Seals of the Office in Court, with which he hath seal'd some hundreds of Commissions; they call them Patents.

L. C. J. Are not you Provincial of the Jesuits, *Mr. Whitebread*?

Whitebread. I cannot deny that, my Lord.

L. C. J. Then *Oates* has spoken more than three true Words. Who were the Commissions seal'd by?

Oates. The Commissions for the General Officers were sign'd by *Joannes Paulus de Oliva*, General of the Order; but those to inferior Officers by the Provincial.

L. C. J. Can you name any one Person he hath seal'd a Commission to?

Oates. He seal'd one to *Sir John Gage* of *Sussex*, which I deliver'd myself.

L. C. J. Did you see *Abby's* Instructions?

Oates. I read them, and did then and always give it as my Judgment, that it was safer to poison the King, than to pistol or stab him — And I have

The *TRIAL* of

this farther to say against *Grove*, that he went about to gather *Peter Pence*, as he told me at my Lodging in *Cockpit-Alley*.

Grove. Did I ever see you at your Lodging ?

L. C. J. Why don't you know *Mr. Oates* ?

Oates. My Lord, I will convince him, that he is very well acquainted with me. In *December* last I met him at the *Provincial's Lodgings*, of whom I went to take my leave before I went to *St. Omers*, and then *Grove* lent me eight Shillings.

L. C. J. How came you to lend Money to a Man you were not acquainted with ?

Grove. I knew I should go along with him to the Coach, and then I should have it again.

L. C. J. And did he pay it you ?

Grove. No : *Mr. Fenwick* did, I think.

L. C. J. Then *Mr. Oates* was known to you all ; he was no Stranger to you, as you would have us believe.

Oates. My Lord, we were in Company too, when one brought us a Note of what was done in the House of Commons turn'd into Burlesque ; (for whatever was done in the Parliament, the Council, or *Westminster-Hall*, they us'd to Burlesque, and then turn it into *French*, and send it to the *French King* :) And we were together at the *Red Posts* in *Wild-street*, when he told me, that he and three *Irishmen* set fire to *Southwark*, and that he had four hundred Pounds for that Service, and the *Irishmen* two hundred apiece.

L. C. J. Were you acquainted with *Mr. Oates*, *Mr. Fenwick* ?

Oates. He was my Father Confessor, my Lord.

Fenwick. I believe he never made a Confession in his Life : Indeed I have been in his Company several times ; and I believe I did pay *Grove* the eight Shillings for him.

L. C. J. Did *Mr. Oates* ever pay you again ?

Fenwick. No : He never was so honest.

L. C. J. Who had you it again of then ?

Fenwick. I believe I had it again, but not of *Mr. Oates*. My Lord, I have done more than this for him : He came once to me in a wretched poor Condition, and said he must turn again, and berake him-

Southwark fir'd
by *Fenwick*.

himself to his Ministry to get Bread, for he had eaten nothing in two Days, and I gave him five Shillings to relieve his present Necessity.

Oates. My Lord, I was never in such Straits; I was order'd by the Provincial to be taken care of by the Procurator, and I never receiv'd so little as five Shillings from Mr. Fenwick, but I have receiv'd twenty, and thirty, and forty Shillings at a time of him.

Whitebread. He has sworn he was present at several Consultations in April and May, but from November till June he was constantly at St. Omers.

Fenwick. We can bring an authentick Writing from St. Omers under the Seal of the College, and testified by all in the College, that he was there all that time.

L. C. J. I don't know what you cannot get from St. Omers; but that would be no Evidence in any Case.

A Certificate from the Magistrates of a Town in Flanders no legal Evidence here.

Fenwick. Does your Lordship think there is no Justice out of England? It shall be sign'd by the Magistrates of the Town.

L. C. J. The Law of England sends no Fact out of the Country to be try'd.

Whitebread. May he be put to produce any two Witnesses that saw him at London at that time he mentions?

Oates. To show you that I was here, Father Warner, Sir Thomas Preston, Father Williams, Sir John Warner, and one Newil, came over with me; as did Hilsley, who was whip'd and turn'd out of the House: And Hilsley lost his Money by the Way, and Father Williams reimburs'd him.

Whitebread. My Lord, he might know that two such came to Town, but he was not with them.

L. C. J. Have you any other Circumstance, Mr. Oates, to prove that you was here?

Oates. My Lord, I lay at Grove's House; and Strange the late Provincial lay there then, and a flaxen-hair'd Gentleman.

Grove. Strange has lain at my House, but I can make it appear by all the House, that he did not lie there either in April, or May.

L. C. J.

Oates order'd
some Refresh-
ment by the
Court.

L. C. J. If you can prove, that Mr. Oates was not in *England*, in *April*, or *May*, you have made a great Defence for your selves ; in the mean time if you have no more Questions to ask Mr. Oates, let him sit down, and have some Refreshment.

Then Mr. Bedlow was sworn.

He depos'd, That he was formerly a Lieutenant in *Flanders*, but for five Years last past he had been employ'd by the Society of Jesuits, and the *English* Monks at *Paris*, to carry Letters to and from *England*, *France*, *Spain* and *Flanders* ; and that he was employ'd by *Harcourt* and *Coleman* to communicate the Letters he brought over to the Popish Party in *England*.

Page 150.
Bedlow's Evi-
dence of the
Popish Plot.

That in the Beginning of *August* last there was a close Consult at *Harcourt's* Chamber, to which the Deponent was not admitted, but that he understood by *Prichard*, it was concerning a Design to kill the King ; and that *Pickering* and *Grove* having fail'd them, they had hir'd four *Russians* to go to *Windsor*, and kill the King there.

That the latter end of *August* the Deponent was at *Harcourt's* Chamber, where were also *Ireland*, *Prichard*, *Pickering* and *Grove*, *Fogarty* and *Harcourt* ; and there it was resolv'd, that since the *Russians* had mis'd of killing the King at *Windsor*, *Pickering* and *Grove* should go on, and *Conyers* should be join'd with them, and they should go down and assassinate the King at *New-Market*, in his Morning Walks ; and that *Grove* was more forward than the rest, and said, since it could not be done clandestinely, it should be done openly, and that those that fell would have the Glory to die in a good Cause : And *Grove*, if he escap'd, was to have fifteen hundred Pounds, and to be a continual Favourite, and respected as a Great Person by all the Church ; and *Pickering* was to have so many Masses said for him, as at twelve pence apiece would amount to fifteen hundred Pounds.

Page 151.

L. C. J. What do you say to *Whitbread* ?

Bedlow. They use to say he was very active in the Plot, but I know it not.

L. C. J. That is no Evidence against him ; what do you say of *Fenwick* ?

Bedlow.

Bedlow. No more than I have said of *Whitebread* ; I only know him by Sight.

Ireland. Can you bring any one to testify you ever saw me at *Harcourt's* Chamber ?

L. C. J. He must then have brought one of your selves, and possibly he cannot bring such a one.

Ireland. Nor no one else, unless such a Knight of the Post, as *Mr. Oates*.

L. C. J. You must be corrected for that ; you shall not abuse the King's Evidence.

An Evidence shall not be affirmed without Proof.

Mr. Just. Atkins. Take off his Credit by Proof if you can, but you must not give ill Language.

Ireland. My Lord, I will bring twenty Witnesses to prove I was in *Staffordshire* all the Month of *August* : And *Bedlow* says he was familiar with me, I desire therefore he may specify the Place and the Company where.

Bedlow. I don't say there was any Familiarity between us ; but I have seen you several times at *le Faire's* in *Somerset-House*, with other Priests and Jesuits, and particularly with *Seignior Perrare*.

Page 152.

L. C. J. Do you know *le Faire* and *Perrare* ?

Ireland. Yes : But I never saw *Bedlow* in their Company in *Somerset-House* in my Life, above once or twice.

L. C. J. Where is that *le Faire* ? You would do well to produce him.

Bedlow. My Lord, he is in the Proclamation, and is run away : And, my Lord, I have something further, that is material ; when the Discourse was about killing the King at *New-Market*, there was also a Design of killing several other Noble Persons talk'd of ; *Knight* was to kill the Earl of *Shaftsbury*, *Pritchard* the Duke of *Buckingham*, *Oncile* the Earl of *Offory*, and *Obrian* the Duke of *Ormond*.

Some Noble-men to be assassinated as well as the King.

Oates. My Lord, I omitted the Design against the Duke of *Ormond*. In *January* last there came Letters to *London*, from *Archbishop Talbot*, which being perus'd by *Fenwick*, *Ireland* and *Whitebread*, were communicated to the Fathers at *St. Omers* : These Letters gave an Account of the fair Prospect the Catholics had of effecting their Designs in *Ireland* : This Letter was enclos'd in another, sign'd by *Whitebread*, *Ireland*, and *Fenwick* ; (which I also saw ;)

Oates gives further Evidence of the Conspiracy in *Ireland*.

wherein

wherein they give God Thanks, that he was pleas'd to prosper their Designs in *Ireland*; and they add, that they would not leave a Stone unturn'd, to root out that abominable Heresy out of that Kingdom—About the 21st of *August* there was a Consult, where *Fenwick* was present, and did consent to the Contrivance of the Duke of *Ormond's* Death and the Rebellion in *Ireland*; and he approv'd of the four *Jesuits*, who were sent to kill him; and he also consented, that if the four good Fathers did not effect the Business, *Fogarty* should be sent to the Archbishop of *Dublin*: And, my Lord, *Whitebread* did consent to this Conspiracy, as appears by their Books of Entry.

L. C. J. You would do well to show us your Book, Mr. *Whitebread*.

Whitebread. We never kept any.

Oates. My Lord, the Consult did; and this Book was kept by the Superiour, and never opened but at the Consult, and therein all the Passages were registred.

Bedlow. My Lord, all the Consults did keep Books, and Mr. *Langborn* was the Person, that registred all into one.

L. C. J. If a hundred Witnesses swear it, they will deny it.

James Bedlow was sworn.

Page 153.
James Bedlow's
Evidence of his
Brother being
employ'd by the
Jesuits.

He depos'd, that several Priests and *Jesuits* us'd to resort to his Brother, when he came from beyond Sea: And that the Deponent had receiv'd many score Pounds of them for his Brother, fifty or threescore Pounds at a time, but the Deponent said he knew nothing of the Plot himself; tho' indeed he had heard his Brother mention the Prisoners Names, and had heard other Priests enquire after them of him.

L. C. J. The Use the King's Council make of this Evidence is to shew, that his Brother was conversant about their Affairs.

Page 154.
A Letter read
in Evidence,
that was not
written either
by, or to any
of the Prisoners.

Then a Letter was produc'd, found in *Harcourt's* Chamber, written from *Peters*, one of the Conspirators, to one Mr. *Tonstall*; which the Lord Chief Justice told the Jury could not be Evidence against any of the Prisoners, but was brought to fortify

Mr. *Oates's*

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Mr. Oates's Evidence, and shew, that there was a Plot in general.

Sir *Thom.^s Doleman* depos'd, that he found this Letter in *Harcourt's* Study, who was one of the Conspirators: And *Oates* depos'd, that he knew it to be Mr. *Peters's* Hand.

Then the Letter was read.

This Letter was dated the 23d of *February*, 1677, and superscrib'd, To his honour'd Friend Mr. *Wm. Tonstall* at *Burton*.

The Jury are told, it was read as Evidence only of the Plot in general, and not against any of the Prisoners in particular.

Peters tells Mr. *Tonstall* in this Letter, "That the Provincial had fix'd upon the 21st of *April*, O. S. for the Meeting of their Congregation in *London*, that they might be ready to give a Beginning to the same the 24th; and warns Mr. *Tonstall*, as having *Jus Suffragii*, to be there; but adds, that every one of them is directed not to hasten to *London* long before the time appointed, nor appear much about the Town, 'till the Meeting was over, lest Occasion should be given to suspect the Design. Finally, Secresy as to the Time and Place was much recommended to all, who receiv'd a Summons, as it would appear of its own Nature necessary.

The Letter is a Summons to appear at the Consult.

Sign'd EDWARD PETRE.

Serj. *Baldwyn*. Pray, Sir *Thom.^s Doleman*, did Mr. *Oates* testify before the Council, that the Consult was to be the 24th of *April*, before this Letter was found?

Page 155.

Sir *Tho. Doleman*. Yes, four or five Days before we found this Letter.

Serj. *Baldwyn*. Where are the Seals that were made use of in sealing the Commissions?

Oates. They are in Court, and were taken out of the Provincial's Chamber.

Whitebread. I confess, they had the Seals out of my Chamber.

Then the Seals were shewn in Court.

Mr. *Finch*. These were us'd to seal Commissions for raising of an Army. We have done with our Evidence for the King, 'till we hear what the Prisoners will say.

Here

The TRYAL of

The Jury are
discharg'd of
Fenwick and
Whitebread,
there not being
sufficient Evi-
dence against
them.

Ireland's De-
fence.

Here the Lord Chief Justice thought fit to ob-
serve, that tho' there might be Evidence sufficient
to satisfy a private Conscience, as to *Whitebread* and
Fenwick; yet there being but one Witness against
them, and the Law requiring two, they could not
be convicted now, and therefore he discharg'd the
Jury of them, and remanded them into Custody
till further Evidence should appear against them;
but told the other three, they should have Liberty
to make their full Defence.

Ireland said, that on the 3d of *August* last he went
into *Staffordshire* with my Lord *Aston* and his Lady,
and his Son, and Sir *John Sturt* and his Lady,
who could prove he was all the rest of that Month
in *Staffordshire*; but that it was a hundred to one
if they were in Court; for he had not been per-
mitted to send a Scrap of Paper.

L. C. J. As soon as your Sister came to me, I or-
der'd she should have Access to you, and that you
should have Pen, Ink and Paper, in order to your
Defence; therefore call your Witnesses, and prove
what you say, as you said you would.

Ireland. I do as much as I can; I name them that
can testify.

L. C. J. If Naming them should serve, you must
have a Law made on purpose for you.

Ireland. Then there is no Help for Innocence.

Recorder. To save him this Labour, the King's
Evidence will prove he was then in Town.

Sarah Pain, Grove's Maid, was sworn.

She depos'd, That she saw *Ireland* at the Door of
his Lodging (which was at a Scrivener's in *Fetter-
Lane*) about the time the King went to *Windsor*.

L. C. J. Sir *Tho. Doleman*, when did the King go
to *Windsor*?

Sir. Tho. Doleman. About the 13th of *August*.

L. C. J. How long have you known him?

Pain. My Lord, he often came to our House, when
I liv'd at Mr. Grove's: He was the Man that broke
open the Packets of Letters, which my Master car-
ried about afterwards; and he seal'd all the Packets
which went beyond Sea.

Ireland. Then I must call the People where I
lodg'd to prove I was out of Town all *August*.

Mrs. Anne

Page 156.
Pain's Evi-
dence, that *Ire-
land* was in
London in
August.

Mrs. Anne Ireland was call'd.

L. C. J. What can you say concerning your Brother's being out of Town in August?

Ireland calls his Witnesses to prove he was out of Town in August.

Anne Ireland. He set out for Staffordshire on Saturday the third of August.

L. C. J. How do you remember that it was just the third of August?

A. Ireland. Because the Wednesday before my Brother and Mother and I were invited out to Dinner, and staid out all Night, and on Friday my Brother came home; and on the Saturday he set out for Staffordshire.

L. C. J. Do you know Sarah Pain, Mr. Ireland?

Ireland. I do not know her.

S. Pain. He knows me very well; I have carried several Letters to him, foreign Letters and others.

L. C. J. They will deny any thing in the World.

Ireland. I profess I do not know her; though she having been Mr. Grove's Servant may have brought me Letters.

Mrs. Eleanor Ireland, the Prisoner's Mother, was call'd.

She depos'd, that her Son went out of Town the third of August, and did not return 'till a Fortnight before Michaelmas; and that she and her Daughter lodg'd at the same House he us'd to lodge all the time he was gone.

Oates. My Lord, Mr. Ireland wrote a Letter, and dated it as from St. Omers, when I took my leave of him at his own Chamber, between the 12th and 24th of August in London; and afterwards he came to Fenwick's Chamber, when I was there, which was at least a Fortnight or ten Days in August, I am sure: And whereas he says, he was the Beginning of September in Staffordshire, he was in Town the first of September, or second; for then I had twenty Shillings of him.

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Harrison appear'd.

He depos'd, That he was Servant to Sir John Southcot; and that the first time he saw Mr. Ireland was on the 5th of August, when they met him at St. Alban's: That Sir John his Master went to meet my Lord Aston and his Lady there; and that they lay at the Bull at St. Alban's that Night, and the

Sir John Southcot's Coachman deposes, that Ireland went down into Staffordshire the 5th of August with his Master.

next

The TRIAL of

next Day set forwards together to my Lord *Aston's* House at *Tixwell* in *Staffordshire*: That he was in Company of Mr. *Ireland* from the 5th of *August* to the 16th, when he parted with him at *Westchester*.

L. C. J. You say you went out of Town on *Saturday*; did you stay at *St. Alban's* 'till *Monday*?

Ireland. No: I went to my Lord *Aston's* at *Standon* in *Hertfordshire* on *Saturday*, where I staid 'till *Monday*, and then we went to *St. Alban's* to meet Sir *John Southcot* and his Lady.

L. C. J. You said you were all *August* in *Staffordshire*; and your own Witness says you were at *Westchester*.

Ireland. In *Staffordshire*, or thereabouts.

L. C. J. Why was not Sir *John Southcot* himself brought to testify this?

A. Ireland. I did it my self; I did not understand what I should have done.

Ireland. It is mere Chance she sent for those she did; for they would not let me have one bit of Paper.

L. C. J. Fellow, what Town was that in *Staffordshire*? Tell me quickly.

Har. It was *Tixwell* by my Lord *Aston's*; and after we had staid there three or four Days, we went to *Nantwich*, and so to *Westchester*.

Mr. *Charles Gifford* was call'd.

He depos'd, That he saw Mr. *Ireland* at *Wolverhampton* a Day or two after *Bartholomew Day*, and that he continued thereabouts 'till the 9th of *September*, and that he could bring twenty more who saw him there.

Ireland. My Lord, there is one *William Bowdrel* will testify the same, if I might send for him.

L. C. J. Why han't you him here?

Ireland. My Sister has done what she could to bring them.

L. C. J. Mr. *Grow*, what say you for your self?

Grow. My Lord, Mr. *Oates* never lay at my House, nor did I ever receive the Sacrament at *Wildbouse*, as he deposes; and if I had my Witnesses here, I could prove it.

L. C. J. What say you Mr. *Pickering*? You rely upon your Masses.

†

Pickering.

Ireland complains, he was not allow'd to send for his Witnesses.

Mr. *Gifford* deposes, he saw *Ireland* at *Wolverhampton* the latter end of *August*, and the beginning of *September*.

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Pickering and *Grow* deny the whole, and complain they had not time to send for their Witnesses.

Pickering. I never saw *Oates* before; and for *Bedlow* I never was in his Company in my Life.

L. C. J. Well, have you any Witnesses?

Pickering. I have not had time to send for any.

L. C. J. You might have mov'd the Court, when you came at first, and they would have given you an Order to send for any.

Ireland. We desire but a little time to make out our Proof.

L. C. J. The Jury must not eat or drink, 'till they give a Verdict.

Grove. Please to ask Mrs. *York* my Sister, if ever she saw Mr. *Oates* at my House.

York. No, my Lord, I did not.

Mr. Just. Atkins. Nor I neither; might he not be there for all that?

Oates. My Lord, I was in a Disguise, and went by another Name.

Ireland. Tho' we have no more Witnesses here, yet we have Witnesses to prove we have more Witnesses.

Ireland offers to prove he had more Witnesses, but 'twas not admitted.

L. C. J. And those Witnesses can prove you have more Witnesses, and so in infinitum.

Ireland. We can go no further than we can go, and can give no Answer to what we did not know would be prov'd against us: My Lord, Sir *Denny Ashburnham* promis'd to be here to testify concerning Mr. *Oates*.

Sir *Denny Ashburnham* appear'd.

He depos'd, That he receiv'd a Letter that Morning with a Copy of an Indictment against Mr. *Oates* for Perjury, which he had shewn Mr. Attorney: That he knew Mr. *Oates* in his Youth, and then he was not a Person of that Credit to be depended upon; and had the Discovery of the Plot depended on his single Testimony, he should have doubted of it, but Mr. *Oates's* Testimony was so corroborated, he said, by concurring Evidence, he was now convinc'd of the Truth of it.

Sir Denny Ashburnham deposes, that Oates had an ill Character for lying in his Youth.
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L. C. J. What was in the Indictment?

Sir Den. Ashb. That he did swear the Peace against a Man, and also depos'd, that there were some Witnesses, that would prove a certain Fact; but when they came they would not testify it, and so he

The TRYAL of

was forsworn : There was no Proceeding upon the Indictment.

L. C. J. Have you any more Witnesses ?

The Prisoners
offer to prove,
that their Rela-
tions had suffer'd
much in the
King's Service.

Ireland. Here are my Sister and my Mother can tell how our Relations were plunder'd for siding with the King.

L. C. J. No ; it was for being Papists, and you went to the King for Shelter.

Ireland. I had an Uncle kill'd in the King's Service ; besides the *Pendrels* and the *Giffords*, who are my near Relations, were instrumental in saving the King at the Fight at *Worcester*.

Pickering. My Father was kill'd in the King's Party.

L. C. J. Why do you fall off from your Father's Virtue ?

Pickering. I have not time to produce my Witnesses.

Grove. As I have a Soul to save, I know nothing of the Matter charg'd against me.

Page 110.
The Ch. Just.
sums up the
Evidence.

Then the Lord Chief Justice sum'd up the Evidence, and directed the Jury, That tho' *Oates* and *Bedlow* were mistaken in the point of time, and *Ireland* was out of Town in *August*, yet this did not entirely destroy their Testimony ; the Substance of their Evidence might be true, tho' they had sworn falsely in this Circumstance ; indeed, he said, it might invalidate the Credibility of their Testimony, if it appear'd *Ireland* was really out of Town in *August* ; but he left it to them, whether they would believe the King's three Witnesses, who had sworn he was in Town, or the others, who swore he was not—

Page 111.

But added, that he thought it impossible for any Men to frame such a Story as the King's Witnesses had told ; or for any one to disbelieve it when it was told ; and that nothing was plainer, than that there was a Conspiracy to bring in Popery, and destroy the Protestant Religion. — Nor was it, he said, at all difficult to believe, That these Priests, who had debauch'd Mens Understandings, overturn'd all Morals, and destroy'd all Divinity, were engaged in such a Design ; whose Humility was such, that they trod upon the Necks of Emperors ; their Charity such as to kill Princes, and their Vow
of

of Poverty such as to covet Kingdoms: That they had rendred all Converse with them impracticable, for they knew no Sin, but what might be indulg'd, no Offence too big for a Pardon; and the blackest often accounted meritorious; and said, if Sacraments could not bind them, what Obligations or Covenants between Man and Man could — After having inveigh'd very severely against the Principles and Practices of the Papists, he concluded, that the Matter was as plain and notorious as could be, that there was an Intention of bringing in Popery by a cruel and bloody way; and he thought Mr. Oates rather justified by the Testimony offer'd against him, than discredited.

Having inveigh'd against the Jesuits Principles, he directs the Jury to find 'em guilty.
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The Chief Justice demanding of the Jury, if they should be long out, they answer'd, they should not be long; and having withdrawn, after a very short Recess return'd, and brought Ireland, Pickering and Grove in Guilty.

The Prisoners are convicted.

Then the Court adjourn'd 'till the Afternoon, when the Prisoners were brought into Court again. It being demanded of the Prisoners severally, what they had to say, why Judgment should not be given against them to die according to Law; and none of them offering any thing material, the Court order'd them to be tied up: After which Mr. Recorder made a Speech to them, wherein he is not less severe upon the Jesuits Principles than the Lord Chief Justice had been in summing up the Evidence, and among other Expressions has this, *That the Prisoners Design was so horrid, that Nothing but a Conclave of Devils in Hell, or a College of such Jesuits as theirs upon Earth, could have thought of it.*

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Page 192.

Mr. Recorder having concluded his Speech, pronounc'd the usual Sentence in Cases of High Treason upon the Prisoners Ireland, Pickering, and Grove; and then they were remanded to Newgate, and the Court broke up.

Sir G. Jefferies.
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Page 193.
Sentence pass'd.

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Page 191.

ARTICLES of Impeachment of High Treason, and other High Crimes and Misdemeanors, against THOMAS Earl of Danby, Lord High-Treasurer of England, which were deliver'd into the House of Lords in the Name of the Commons of England, by Sir Henry Capel, Decemb. 23. 30 Car. II. 1678.

Quer. If not
the 31st of the
King.

The six Arti-
cles against him.

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1. Art. " **T**HAT he had traiterously assum'd Regal Power, in treating of Peace and War with foreign Ministers, and giving Instructions to his Majesty's Ambassadors abroad, without communicating the same to the Secretaries of State, or the Council.
2. " That he endeavour'd to subvert the antient Form of Government, and introduce an arbitrary Government; and to effect this, he procur'd an Army to be rais'd, on pretence of a War with France; and an Act being pass'd for disbanding the same, he notwithstanding continued the Army, and applied the Money given for disbanding them towards their Subsistence, and neglected to take Security of the Paymaster of the Army, as the Act required.
3. " That to prevent the Meetings of Parliament, he did negotiate a Peace with the French King upon disadvantageous Terms, and did endeavour to procure great Sums of Money of the French King to carry on his aforesaid traiterous Designs and Purposes.
4. " That he was Popishly affected, and traiterously conceal'd the Popish Plot, and suppress'd and discountenanc'd the King's Evidence, which tended to the Destruction of the King, and the Protestant Religion.
5. " That he had wasted the King's Treasure, in issuing Money for unnecessary Pensions and secret Services, to the Value of 231602 l. within
" two

" two Years ; and diverted one whole Branch of
 " the Revenue to private Uses, without accounting
 " for it, contrary to the Act which granted the
 " same ; and that he had remov'd two of his Ma-
 " jesty's Commissioners of that part of the Reve-
 " nue for refusing to consent to these Proceedings,
 " and to advance Money on that Branch of the
 " Revenue for private Uses.

6. " That he had procur'd to himself considera-
 " ble Grants of Inheritance out of the antient Re-
 " venue of the Crown, contrary to Act of Par-
 " liament.

For all which they impeach the said *Thomas Earl of Danby* of High Treason, and other High Crimes and Misdemeanors, &c. And pray that he may be put to answer, and brought to Tryal and Judgment thereupon ; And that he might be sequestred from Parliament, and forthwith committed to safe Custody.

Thursday, March 20. 1678. Resolv'd *Nemine contradicente*, that a Message be sent to the Lords to remind them of the Impeachment against the Earl of *Danby*, and to desire he be forthwith committed to safe Custody.

A Message to remind their Lordships of the Earl's Impeachment, and that he might be committed.

And Resolv'd, That a Committee should draw up further Articles against him.

Saturday March 22. 1678. Resolv'd, that another Message be sent to the Lords to the same Effect as the former.

March 25. 1679. A Message came from the Lords, that they had sent to apprehend the Earl of *Danby* both to his House in Town, and at *Wimbolton* ; and that the Usher of the black Rod return'd that he could not be found.

A Message from the Lords, that the Earl was withdrawn.

Friday, April 4. 1679. Resolv'd, that his Majesty be Address'd to issue his Proclamation for apprehending the Earl of *Danby*, with the usual Penalties on such as should conceal him ; and that the Officers of his Majesty's Palaces might have Orders that he should not be harbour'd in any of them.

Address for a Proclamation to apprehend him.

Page 195. *The PLEA of the Earl of Danby to the said Articles of Impeachment.*

He pleads his Majesty's Pardon.

HE saith, and humbly offereth to their Lordships, That after the said Articles exhibited, viz. the first of March last past, his Majesty, by his Letters Patents under the great Seal, of his special Grace, certain Knowledge, and mere Motion, hath pardon'd, remis'd, and releas'd to him the said *Thomas* Earl of *Danby*, all and all manner of Treasons, Misprisions of Treason, Insurrections, Rebellions, Felonies, Exactions, Oppressions, Publication of Words, Misprisions, Confederacies, Concealments, Negligences, Omissions, Offences, Crimes, Contempts, Misdemeanors and Trespasses whatsoever, committed, omitted, or done, before the 27th of February then last past: [*Then the Crimes charg'd are specified.*] And the said Pardon expresses, that the said Pardon should be good in Law, altho' the said Treasons, &c. were not certainly specified, notwithstanding the Statute of 13 Rich. 2. and 14 Ed. 3. or any other Statute to the contrary: And that the said Pardon should be pleaded and allow'd in all his Majesty's Courts, without any Writ of Allowance, &c. *Then follows the Pardon in hæc verba; Carolus Secundus, &c.*

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And the said Earl doth aver, that he is the same *Thomas* Earl of *Danby* in the said Pardon named; which Pardon he pleads in Bar to the said Impeachment, and prays their Lordships Judgments, that the said Pardon may be allow'd, and he the said Earl may be acquitted and discharg'd of the Treasons and Crimes in the said Impeachment alledg'd against him.

The

The Reasons given by the Commons of their Proceedings, as to the Earl of Danby, at a Conference with the Lords, on Monday, May 26. 1679.

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AND first they remind their Lordships, That upon the Impeachment of the House of Commons against the Earl of Danby the common Justice of sequestering him from Parliament, and committing him to safe Custody, was denied them ; of which their Lordships had been since so sensible, that on the tenth of April last their Lordships had declar'd, *That upon the Impeachment of a Peer he ought of Right to be order'd to withdraw, and then be committed* : That if this Justice had not been denied the Commons, great part of the Sessions, which had been spent in framing a Bill to cause him to appear, had been sav'd ; and he had not had an Opportunity of obtaining that illegal Pardon, dated March 1. which he had since pleaded in Bar of his Impeachment ; or of wasting so much Treasure, as he had done since the Articles exhibited against him.

Page 198.
Reasons given by the Commons at a Conference, why they could not proceed to the Tryal of the Earl, and the five Lords, at the Times appointed by the Lords.

That the said Bill (*to cause him to appear*) being ready for the Royal Assent, the said Earl surrendered himself, and by their Lordships Order of the 16th of April last was committed to the Tower ; after which he pleaded the said Pardon ; and being press'd, did at length declare, he would rely upon, and abide by that Plea ; which Pardon being illegal ought not to bar or preclude the Commons from having Justice on their Impeachment ; and thereupon they did with their Speaker the 5th of this Instant May demand Judgment against the said Earl on their Impeachment ; but to their Surprise they receiv'd a Message from their Lordships, May 7. That as well the Lords Spiritual, as Temporal, had order'd, that the tenth of May instant should be the Day for hearing the Earl of Danby to make good his Plea of Pardon : And that their Lordships had address'd to his Majesty, for naming a Lord High-Steward.

The Earl surrenders on a Bill brought in to compel him to appear, and is committed.

The Lords Spiritual vote in Matters previous to the Tryal, which the Commons insist they have no Right to do.

The IMPEACHMENT of

The Commons
deny a High-
Steward is ne-
cessary in Im-
peachments.

That the Commons apprehended, that the admitting the Lords Spiritual to exercise Jurisdiction in these Cases was an Alteration of the Judicature in Parliament; and that if a Lord High-Steward were necessary on Impeachments, the Power of Judicature in Parliament upon Impeachments might be defeated, by the suspending, or denying a Commission to constitute a Lord High-Steward.

That the Day of Tryal appointed was so near, that the Proceedings could not be adjusted between the two Houses, and consequently the Commons could not then proceed to Tryal.

That for reconciling Differences, the Commons thought fit to propose, that a Committee of both Houses might be appointed for that purpose: At which Committee it was agreed by their Lordships, that the Proposition, *as to the time of Tryal*, should be the last thing insisted on.

That the Commons then communicated to their Lordships, that they should insist on their former Vote, *That the Lords Spiritual ought not to have any Vote in any Proceedings against the Lords in the Tower*; and that when this Matter should be settled, and the Methods of Proceeding adjusted, the Commons should then be ready to proceed upon the Tryal of the Pardon of the Earl of *Danby*, against whom they had before demanded Judgment.

That their Lordships, without having given the Commons any satisfactory Answer as to their Vote, did contrary to their aforesaid Agreement send them a Message on *Thursday* the 22d of *May*, That the *Lords Spiritual*, as well as Temporal, had order'd that the 27th of this Instant *May* was appointed for the Tryal of the five Lords; so that their Lordships had not only departed from their said Agreement, but left them to conclude from this Message, and from their Votes of the 14th of *May*, That the Lords Spiritual have a Right to sit and vote, 'till the Court proceeds to the Vote of Guilty, or not Guilty; for from the Bishops asking leave to withdraw, with Liberty of making their usual Protestation, (as appear'd by their Lordship's said Vote) and by the Bishops still continuing to give their Votes in the Proceedings relating to the Impeachments,

ments, their Right of Judicature upon Impeachments seem'd to be maintain'd, and consequently that they might be allow'd to judge upon the Earl of Danby's Plea of Pardon, and upon these and other like Impeachments, altho' no such Power was ever claim'd by their Predecessors, and was utterly deny'd by the Commons.

And the Commons believe it so intended, because the very asking leave to withdraw implies a Right of being there: And it was in their Power for the future, whether they would ask leave to be absent; and the Temporal Lords would have a like Power of denying leave, if that should once be thought necessary.

The Commons therefore thought themselves oblig'd not to proceed to the Tryal of the five Lords on the 27th, but to adhere to their aforesaid Vote; for which they offer'd these further Reasons also.

1. Because their Lordships had receiv'd the Earl's Plea of Pardon with a Protestation, wherein he had aspers'd his Majesty by false Suggestions, as tho' his Majesty had commanded or countenanc'd the Crimes he stood charg'd with.

2. The Setting up a Pardon to be a Bar to an Impeachment defeated the whole Use and Effect of Impeachments; and therefore the Case of the said Earl (which in Consequence concern'd all Impeachments) ought to be determin'd before that of the said five Lords, which is but their particular Case: [Here they quote the Answer of King Charles I. to the nineteen Propositions made him by both Houses of Parliament; from whence they infer that it was that King's Opinion, that a Pardon could not prevent the Tryal of one impeach'd.]

The Commons question, if a Pardon can be pleaded in Bar to an Impeachment.

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3. Until the Commons have Right done them against this Plea of Pardon, they should apprehend that the Justice of the Kingdom would be defeated by Pardons of the like Nature in the Case of the five Lords.

4. That an Impeachment was virtually the Voice of the whole Kingdom, and it would be dangerous if the whole Nation should have occasion ministred

to

The IMPEACHMENT of

to them to be apprehensive of the utmost Danger from the Crown, from whence they of Right expect Protection.

5. That Articles were first exhibited against the said Earl, and the Tryal appointed by their Lordships to be before that of the five Lords; but their Lordships having since inverted that Order, had given them Cause to doubt, if they should proceed first to the Tryal of the five Lords, not only that Justice would be obstructed in their Case, but that they should never have Right done them in this Plea of Pardon.

The Lords Resolve, that the Bishops may vote in Matters previous to Tryal in Capital Cases.

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Heads of Mr. Powel's Speech in the House of Commons, concerning the Earl of Danby.

The 27th of May, 1679, The Reasons given by the Commons at the Conference the Day before being read in the House of Lords, it was put to the Vote, whether their Lordships should insist on their Votes of the 14th Inst. concerning the Lords Spiritual, and it was carried in the Affirmative.

The Honourable Mr. *Powel* in his Speech in the House of Commons concerning a Message to the Lords for the Commitment of the Earl of *Danby*, says, that the Earl was the Person to whom they ow'd their Fears and Dangers of the *French* King, and those Threats and severe Answers to their Addresses the last Sessions of Parliament: That he was the Person to whom they ow'd the Ruine of the Nation, and the exhausting the King's Revenue, and the many Prorogations that happen'd the last Parliament: The Person to whom they ow'd the raising of a standing Army, which was to be kept up by the Receipt of six Millions of Livres yearly from *France* to enslave them and their Religion.

That it was to him they ow'd the late Bone that was thrown in the last Parliament to prevent a good Issue of their Proceedings: And that he was now laying down his Staff, and making up his Accounts in the Treasury as he pleas'd, to enrich himself out of the Spoils of the People.

The Earl of Danby's Speech, on the bringing her, up the Articles.

When the Articles of Impeachment were brought up against the Earl of *Danby* on the 23d of December, 1678, he made a Speech, wherein he says, That those Articles in the Charge, which seem'd to have any thing of Treason in them, had their Answer so obvious, that there was very little in them, which

which might not be answer'd by many others as well as himself, and some of them by every Man in the Kingdom.

1. As to the first, his assuming Regal Power, he said, he did not well understand, having not done any thing of Moment either at Home; or relating to foreign Matters, for which he had not his Majesty's Orders under his Hand, and particularly for the Letters made use of against him.

2. As to the second he said, the Army was no more rais'd by him, than by every Lord in that House, and that in his Station he must be a Fool to desire to create such a Charge, as an Army must necessarily produce; and for that part of this Article, which charg'd him with not taking Security of the Paymaster of the Army, the Fact was otherwise, for he had given 400000*l.* Security.

3. As to the third, which was of the same Nature with the first, and had the same Foundation, (*viz.*) what a certain Gentleman [*Montague*] had thought fit to produce to the House of Commons, he thought the thing carried its own Answer, and and he should only say, that he chose rather to lie under this Charge, than to be under that Gentleman's Circumstances.

4. As to the fourth, it was not only false, but impossible to believe it true, unless they thought he would act counter to his own Interest: That he could not possibly hope to be better than he was by the King's Destruction, and that there was not a Man living, whose Happiness depended more upon the Preservation of the King's Person, than his—As to the concealing the Plot, it had been own'd at the Bar of the House of Commons by him who gave him the Intelligence of it, that he had all the Dispatch and Encouragement from him that he could give him: And that he, (the Earl) had been particularly instrumental in seizing Mr. Coleman's Papers, which were the most considerable Evidence of the Plot: And as to his being Popishly affected, even some of those, who voted against him, had own'd the Falsity of that Allegation: That he had a younger Son in the House of Commons, whom he should love the better for moving to have that
part

The IMPEACHMENT of

part of the Article stand, that by that Pattern it might appear, with what sort of Zeal the whole had been carried to his Prejudice.

5. As to the fifth Article he said, he did not know of any Treasure that had been given in his time to waste: That he enter'd upon an empty Treasury, and in six Years not a Farthing had been given his Majesty, but what was appropriated to particular Uses, and so strictly applied by him; and not one of those Aids but had cost his Majesty Money out of his own Purse, to the same Uses they were given: And he took the Vanity to say, that by the Payments he had made to the Navy and Seamen beyond former times, and the paying off the greatest part of the Debt, which was stop'd in the Exchequer before his time, &c. he doubted not but his Actions would appear rather meritorious than criminal upon this Article.

6. As to what Estate he had gotten, it was inconsiderable, and not half what others had acquir'd in lesser Places in half that time: And that if his Obedience to the King should not be accounted a Crime, he thought nothing else could stick upon him from these Articles: That if he had been a Papist, or a Friend to the *French*, he had not been now accus'd; and he appeal'd to his Majesty and the Committee for foreign Affairs, if he had not deliver'd it as his constant Opinion, That *France* was the worst Interest his Majesty could embrace, and from whence he apprehended the greatest Danger.

He desires their Lordships would not take the Crimes charg'd to be what they were call'd, but examine the special Matter.

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That he hoped their Lordships would distinguish rightly what the Crimes were, (if they could be prov'd) and not take them for what they were call'd: And it was for this Reason he thought the House had wisely provided to have the *special Matter* laid before them; for a Man might be accus'd of having *traiterously* pass'd the River in a pair of Oars; this was special Matter, and might be stil'd Treason by inserting the Word *traiterously*; but their Lordships would not therefore proceed as against Treason; but use that Caution which was necessary for all their Safeties: For what the House of Commons might do in such a Case, his Majesty might do by his Attorney; and what either of them might do against one

one Lord, they might do against more ; and their Lordships would hold their Seats very precariously, if they might be remov'd by having a Fact call'd *Treason*, whether it were so or no.

That he had Reason to believe, that even in the House of Commons the Matter charg'd was not thought to amount to *Treason* ; and he thought their Lordships had too sad an Example in their Memory ever to assist the making of *Treason* by Accumulation.

Arguments of the Earl of Danby in the Court of King's-Bench, on his Lordship's Motion for Bail, on the 27th of May in Easter-Term, 1682.

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THE Return of the *Habeas Corpus* being read, Mr. *Saunders*, his Lordship's Council, mov'd ; That whereas in *Easter Term*, 1681, the Court had dismiss'd his Lordship with a Declaration, that they would take into their Consideration what Answer they would make to what had been then said by his Lordship and his Council on that Head, that they might now know the Pleasure of the Court, as to the Earl of *Danby's* being bail'd : Here the Lord Chief-Justice reprimanded Mr. *Saunders*, and said, the Court had never said they would take the Earl's Case into Consideration again ; for they then told the Earl, it was not in their Power to relieve him. Then the Earl appeal'd to the rest of the Judges, and all that were then in Court, if my Lord Chief-Justice himself did not declare they would consider further of his Case ; and said, this unhappy Introduction gave him Reason to believe he came with some Prejudice before his Lordship ; but however he thought every Man in *England* so much concerned in his Case, that he must desire his Lordship's Patience and Attention, as to what he had to offer, as well in the Behalf of the Liberty of the Subject in general, as in his own Behalf.

The Earl's Arguments in the King's-Bench, why he ought to be admitted to Bail.

Sir Fr. Pemberton, L. Ch. Just.

The Earl said the Lord Chief-Justice did tell him, when he was before that Court that time twelve Month, that the Court would take time 'till the

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An Indictment
against the Earl
as Accessary to
the Murder of
Sir E. B. Godf.

the following Term to consider of his Case, but that Care was taken the first Day of the following Term to prevent his coming there by an Indictment that was prefer'd against him, for his being privy to the Murder of Sir *Edmund-bury Godfrey*; which he did not wonder at, for there was nothing so black which had not been invented to charge him with: That this prevented his coming before them, till Notice was given to Sir *Edm. Godfrey's* Brothers, to shew what they had to alledge against him, and he could get himself discharg'd of that Indictment. As to that Wretch *Fitz-Harris*, who had accus'd him, he did two Days before his Death send the Minister of the Tower to his Lordship, to beg of him that his Lordship would forgive him for having sworn falsely against him; confessing he was put upon it to save his Life, and naming by whom he was prompted to it.

After his Discharge from that Indictment, he said, there seem'd to be a Probability of the Call of a Parliament, and while he could hope for that he was resolv'd to trouble no other Place; but now having little Prospect of that kind, and having been a Prisoner three Years, without knowing wherein the Treason consisted, that had been laid to his Charge, he came now before that Court, as the only proper Place for all Persons to resort to for their Liberty; and he was sorry he was put under that great Disadvantage of speaking in his own Cause: But observing the last time he was there, that his Council were check'd for urging Things which seem'd to relate to Matters of Parliament (tho' he thought it did not touch their Jurisdiction) he chose to rely on the Court's pardoning his own Defects, rather than expose his Council to those Rebukes they had met with in another Place, for offering to be Council with him even in Matters of Law; and which he thought was never heard of, but in his Case. Then he proceeded to shew:

The Earl shews
the Hardness of
his Case.

Accus'd without
Oath.

No particular
Treason speci-
fied.

1. That he had been both accus'd and committed without any Oath made against him.

2. That there was no particular Treason specified in the Articles; only the Word *traiterously* had been applied to things which were not Treason,

(if

(if they had been true ;) whereas in the Impeachments of the other Lords they were charg'd with the Higheſt Treasons in Name, and upon Oaths made againſt them.

3. That when a Day was ſet by the Lords for his being heard, and he appear'd, his Council were threaten'd, if they dar'd to ſpeak to the Matter of Law. Council threaten'd, if they ſpoke to Matter of Law.

4. That he had his Maſteſty's Pardon, and yet the Pardon and he had been Priſoners together above three Years ; of which he thought this was the firſt Precedent ſince the Conqueſt. He has his Maſteſty's Pardon.

5. That he had not only his Maſteſty's Pardon, but his Maſteſty's Declaration of his Innocence in his Speech to both Houſes of Parliament ; wherein his Maſteſty alſo declar'd, that he would give him his Pardon ten times over, if that he had already was defective either in Matter or Form. And his Maſteſty's Declaration of his Innocence. Page 205.

6. That he had been kept Priſoner above forty Months without any Proſecution for the greateſt Part of that time ; which was another Reaſon in Law for bailing of him, for that, he ſaid, inſtead of a Reſtraint *ad Cuſtodiam*, he had undergone a Punishment greater than the Crimes alledg'd againſt him could have deſerv'd, if they had been true : And added, that the Length of Imprisonment had been agreed to be a ſufficient Ground for Bail, both by the King's Council and the Priſoner's, in the Arguments on the grand *Habeas Corpus*, 3 Car. as alſo in *Melvin's Caſe*, 1 Car. and in *Sir Tho. Darnell's* and other Caſes : He ſaid, his Maſteſty had alſo given his Directions to Mr. Attorney to give his Conſent a ſecond time to his being bail'd (which Mr. Attorney acknowledg'd in Court :) And he ſaid, there was hardly a Precedent of the King's Priſoner, and at the King's Suit, refus'd to be bail'd, when the King's Conſent had been obtain'd for it ; and that the Precedent would be no leſs ſtrange and new againſt the King, than againſt himſelf, if he was not permitted to be bail'd under ſuch Circumſtances. Kept Priſoner forty Months without Proſecution. The King directs the Att. Gen. to conſent to his being bail'd, and yet refus'd.

That it muſt be very dangerous to the Subject, and a plain Failure of Juſtice, if he could be ſo reſtrain'd of his Liberty, that he might not be bail'd without the Leave of the Houſe of Lords :

For

The IMPEACHMENT of

For that House could not meet but when the King pleas'd, or sit longer than he pleas'd; so that to say a Man shall be Prisoner 'till discharg'd by the House of Lords, is to say he shall be a Prisoner during the King's Pleasure, which was the great Grievance complain'd of, when the Petition of Right was granted, and was thought to have been fully redress'd, when that was granted.

Then he cited my Lord Coke's Comment on these Words of *Magna Charta*, *Nulli Vendemus, Nulli Negabimus, aut Differemus Justitiam*, &c. which my Lord Coke says are fully expounded by later Statutes, viz. 2 *Eliz.* 3. which direct, that there shall be no Delay, or Hindrance of Justice, by any Seal, or Order, or any Writ whatever, either by the King, or any other——That my Lord Coke in his Comment on the 15 *W.* 2. speaking of what things are bailable, and what not, says, the Offenders in Treason, &c. are not to be replevied by the Sheriff, yet they may be bail'd in the King's Bench: And that the Lord Chief-Justices *Scroggs* and *North*, and the Justices *Windham* and *Jones*, had given the same Opinion in his particular Case in the House of Lords.

That if he might not be bail'd, there must be a Failure of Justice, which my Lord Coke says the Law abhors; adding, *That it is unreasonable to think that a Man has a Remedy for his Cattle, if detain'd, and none for his Body indefinitely imprison'd*: And the Earl said, he hop'd the Court would either admit him to Bail, or point out a prefix'd time when he should be try'd, or discharg'd.

He said, he took it for granted, that there would have been no Dispute in this Matter, but for an Order of the House of Lords of the 19th of March, 1678, which was suppos'd to stand in the Way, viz. *That in all Cases of Appeals and Writs of Errors, they should continue and remain in the same State as they did at the Dissolution of the preceding Parliament, without beginning de novo*: And that the Dissolution of the last Parliament doth not alter the State of the Impeachments brought up by the Commons in that Parliament.

He said, that notwithstanding this Order, it was the Practice of the Courts of Chancery, and other inferior Courts, to proceed in Causes, where Appeals

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Page 207.
Appeals and Writs of Error, and Impeachments, need not be begun de novo on calling of a new Parliament, but remain in the same state they were at the Dissolution of the old.

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Appeals, or Writs of Error, had been brought in Parliament, upon a Prorogation or Dissolution of the Parliament; and the Reason was, for that the Parliament might proceed again upon the same Appeals and Writs of Error, notwithstanding those Proceedings in inferior Courts in the Interval of Parliaments: The Plaintiff in Parliament might revive the same Matter again there by *Scire facias*, or Return, &c. but he said, it was never heard that the Lords themselves did proceed again *ex Officio*, without the Petition of the Party to revive the Cause: And the Case was the same in Impeachments, and the Lords would not proceed *ex Officio* upon them neither, unless they were call'd upon by the Prosecutors; and if they did, yet their Lordships Proceedings would be no more hinder'd by the Bailing of him in this inferior Court, than they were in the other Cases by the Executions, and Sequestrations, which are granted in the Intervals of Parliament; which were allow'd as well for Prevention of Delay, as for preventing a Failure of Justice.

But inferior Courts may proceed to grant Execution, &c. on a Prorogation or Dissolution notwithstanding.

And the House of Lords never proceed *ex Officio* without the Parties petition to revive the Cause.

And he said, for the sake of *English Liberty* (tho' it were not his own Case) he should affirm further, That if the Lords Order had actually forbid his being bail'd, such an Order being against *Magna Charta* and the fundamental Right of the Subject's Liberty, (as whatever subjected a Man to an indefinite Imprisonment was) the Court of King's Bench ought to interpose, and free him from such a Slavery, for 'twas no better; and here he repeated some of the Lord *Shaftsbury's* Arguments in that Court upon an *Habeas Corpus*, who held, that they were proper Judges of all such Orders, as concern'd the Liberty of the Subject; and if it were otherwise, forty Members, or a greater Number, might be taken as well as one; and if it were admitted, that they were without Relief in that Ordinary Court, no one could foresee the Consequence, especially since it cannot be denied, but that the King may impeach as well as the Commons, and that he can call and dissolve Parliaments at his Pleasure: And then he saw no Security we had of our Liberties, but that we liv'd under a King, who would not exercise that Power over us, which we will needs put into his Hands,

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The King may impeach.

The IMPEACHMENT of

altho' he does not himself desire it. But other Kings might be as ready to make use of it hereafter, as they were now to force it upon this.

He then repeated Sir William Jones's Declaration in that Court, *That either a Pardon, a Prorogation, or a Dissolution, was a Cure against such Imprisonments*; and said, that then certainly he ought to find Relief from his Imprisonment, who had every one of those Cures of his Side.

If an Order of Parliament is of any Force after a Prorogation or Dissolution.

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He said, it was admitted in the worst of Times, even during the Usurpation, that an Order of Parliament was not of Force after a Dissolution of the Parliament, as was argued by Serj. Maynard in Sir John Stowel's Case, and hop'd, that the Liberty of the Subject was not more precarious now, than it was in those Days; and remembred, that one of the chief Grounds of the late War between the King and Parliament was, that an Ordinance of Parliament should not be held equal to an Act of Parliament, and yet those were Orders of both Houses: And here an Order of one House was held equivalent to a Law, and that against our greatest and most sacred Laws of Liberty, which had been so often confirm'd to us.

He observ'd, that the Distempers of the Times had given more Weight to this Order, than any thing else; and the Court was sensible in what a Heat it had been made; and he was sure, the Lords themselves would now no more endure to have it constru'd in that Sense, which seem'd to be put upon it, (*of subjecting Men to an indefinite Imprisonment*) than they would endure themselves every Day to be put in the Stocks: Besides, he said, the Court's Bailing him would not intrench upon this Order any more than the Courts of Chancery and Exchequer did, when they proceeded upon Appeals and Writs of Error, during the Interval of Parliaments: He said, that this Court had allow'd the Pardon of a Peer, when pleaded here, tho' they had no Power to proceed to the Tryal of him, and that there were divers Instances of that Court's exercising their Power to avoid Delays, &c. where they had no Jurisdiction to determine the Matter.

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That Men had been discharg'd by that Court upon the King's Writ, without any other Reason given in the Writ, but because the King held the Parties to be innocent, as in the Cases of *Melton*, Archbishop of York, and *Gravesend*, Bishop of London, 7 Ed. 3.

He said, *Hugh Spencer* and *Sir Tho. Beckley* were mainpriz'd to Parliament, although the latter was upon Suspicion of the Murder of a King, (*viz.*) Ed. 2.

That inferior Courts had bail'd to Parliament about the Pope's Bull, &c. *Reg. Writs*, 274.

That the King had abolish'd Accusations of Treason, as in the Case of *Talbot* and *Ormond* in Hen. 6. And where one pleaded an insufficient Pardon, the Court had such Regard to the King's Intention of pardoning, that the Party was order'd to procure a better Pardon, 26 Aff. 46. And the King's Intention of pardoning the Earl had been sufficiently declar'd to the whole Kingdom. And having sum'd up what he had already insisted on, he said, he had now no Prospect, when a Parliament would sit; and if they did, it was a Question, whether he should meet with Relief there; for that his Petition had been read the first Day of the last Parliament, but publick Business intervening, they had not time to consider his private Case; that this had been his Misfortune in three Parliaments successively; which made it but too plain, that he lay under an indefinite Imprisonment, unless he should find Relief in that Court, for that there was no other to appeal to.

And he concluded, that as the King himself had sufficiently declar'd, that there was no Danger in letting him have his Liberty, so he had such Bail to offer to his Lordship, as would sufficiently satisfy the World, that he should be forth coming, when and where that Court should appoint; and then the two chief Grounds of Detention in Prison; *viz.* *The Danger of a Man's having his Liberty, and the Danger of his not appearing to abide his Tryal*, would be fully answer'd.

The Lord Chief-Justice answer'd, that the Earl had said many material things with much Acuteness, and

Persons discharg'd from their Imprisonment by the King's Writ to the King's Bench declaring them innocent.

Instances of inferior Courts bailing to the Parliament.

On a defective Pardon the Court order the Criminal to procure another, in regard to the King's Intention.

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The L. C. Just. Pemberton answer'd.

The IMPEACHMENT of

That tho' this Court would bail for Treason, yet he was imprison'd by a higher Hand, and they could not meddle with it.

and they were not insensible of the Hardship of his Lordship's Case, or of the King's Desire, that he should not be longer imprison'd; *That the King had done as much as lay in his Power*: He also admitted, that that Court could bail for Treason; nor was the Indictment about Sir *Edm. Godfrey*, or the Order of the House of Lords any Hindrance to his Lordship's being bail'd; but the Misery of it was, they could only compassionate him, for his Lordship was imprison'd by a higher Hand, and where they had no Power to intermeddle.

Whether the Lords had Cause to commit, they could not inspect; but they ought to presume their Lordships would do nothing unjustly.

He said also, that all the Judges had deliver'd their Opinions, that the Earl could not be bail'd; and the Truth was, he was imprison'd by too high a Court for them to bail him. That his Lordship was not indefinitely imprison'd; for whenever his Majesty pleas'd to call a Parliament, he would have Remedy, which he would do for the Peoples Good, when he saw fit: That the Circumstances of State might make it not convenient at some times: And tho' this might prove mischievous to a single Person, or two, or three, yet such things must be endur'd for the publick Good: That he must confess, as this Case happen'd, his Lordship was under a *Temporary indefinite Imprisonment*, but he must be contented to wait the King's Pleasure, when he would call a Parliament.

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Resolv'd by all the Judges that the King could not permit the Earl to go to his Country-House with a Guard.

The Earl reply'd and insisted upon some of his former Arguments, but denied, that the Opinion of the Judges had ever been demanded in his particular Case, unless it was when he petition'd the King to go to his Country-House at *Wimbleton* with a Guard; which Petition his Majesty having refer'd to the Judges, they did indeed report, according to their wonted Prudence and Caution, that his Majesty could not legally grant the Petitioner's Request: And that he still apprehended he was under an *absolute indefinite Imprisonment*; for he did not know what *temporary indefinite* meant.

Mr. Just. Jones said, he remembered the Case the Chief-Justice hinted to be put to the Judges: And it

it was, whether the Lords in the Tower might be bail'd? And it was the Opinion of the Judges, that they might not; but he thought the Earl of Danby was not then particularly concern'd in that Question; and that there was a great Difference between his Lordship's Case, and the Popish Lords; and he thought, that there was then also a Day appointed for the Meeting of the Parliament.

The Judges Resolve, that the Popish Lords could not be bail'd.

The Chief-Justice said, the Earl was mistaken, if he thought that Court kept him in Prison; for he was kept in Prison by a superior Court, which was too big for them to examine what they did.

To this the Earl answer'd, that it being admitted, that it was not the Lords Order that kept him a Prisoner, he could not tell by whom he was detain'd a Prisoner; it might be by the Stars, but concluded, that by *Magna Charta* and the Petition of Right every *Englishman*, who was imprison'd, had some certain Prospect of Relief in a reasonable time; and that he was now in the King's proper Court for Justice, and as the Chief-Justice had given his own Opinion, he desir'd the rest of the Judges would please to deliver theirs severally.

Then Mr. Justice Jones said, That the Earl had been charg'd with Treason by an Impeachment, and had pleaded a Pardon to the Impeachment before the Lords; which Plea he took to be a tacit Confession of Guilt in Law, tho' the Party were never so innocent; insomuch, that a second Plea could not be admitted; and in that Case he did not see how that Court could then have any thing to do with his Lordship.

Whether if a Man pleads a defective Pardon, he may plead over.

The Earl answer'd, he had observ'd the Opinions of some great Men to be otherwise, and particularly my Lord Coke; who mentioning the Case of Gravesend Bishop of London, 7 Ed. 3, who got a Writ of Discharge to the King's Bench, and did not take a Pardon: My Lord Coke there says, *That it may be thought, that the taking of a Pardon would have imply'd a Confession of the Fault, and therefore he went a new Way, but that was a Mistake; and that a Pardon was the safest and surest Way.* And tho' the Earl was not then provided with Precedents in that Case, yet he said he remembered the Case of a Coiner

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The IMPEACHMENT.

at Durham, where his Pardon proving defective, he was allow'd to plead over : And that it had been declar'd in the House of Lords in his own Case, That they hop'd it should never pass for Law, that a Man should not have one Plea for his Life ; and that if a Man was not allow'd to plead over, in case his Pardon prov'd defective, it did but ensnare him : And concluded, that this was rather going into the Merits of his Cause, than considering his Demand, which was only Bail.

Three of the Judges of Opinion the Earl could not be bail'd.

Mr. Justice *Dalben* said, That he must confess the Case to be very hard, and he was not of his Brother *Jones's* Opinion, that his Lordship would be debar'd of another Plea, if the Pardon should be over-rul'd ; but if he was put to give a present Answer as to his Lordship's being bail'd, he must deliver his Opinion that he could not, tho' he thought it might well deserve another Consideration.

The other doubted.

Mr. Just. *Raymond* said, That his Lordship's Case was attended with so many weighty Circumstances, as it ought to be well consider'd ; but that as to what had been said by Mr. Just. *Jones* about pleading over, he thought it did not properly lie before them : That the Earl had said some things, to which he thought full Answers might be given, but that he had also said some things, to which it might not be so easy to give an Answer : That this Case deserv'd the Consideration of more of the Judges betwixt this and next Term, and he should not give any Opinion in it at present.

Then a Council mov'd, that his Lordship might be brought thither again by Rule the first Day of the next Term ; but the Chief Justice seeming displeas'd at it, the Earl excus'd it, and said, it was all alike to him, whether there was a Rule of Court, or no ; for that they were like to be troubled with him again, and that he should not easily give over a Cause, wherein he took the Liberty of the Subject in general to be concern'd, and wherein he had found so little to be said against him.

The Earl is remanded to the Tower.

The L. Ch. Just. told the Earl, he must for the present be contented to be remanded, and directed the Officer belonging to the Lieutenant of the Tower to take back his Prisoner.

The

The Tryal of JAMES MITCHEL for attempting to murder the Archbishop of St. Andrews, and actually wounding the Bishop of Orkney, before the Lord-Justice General and the rest of the Lords Commissioners of Justiciary, at Edinburgh, Jan. 7. 30 Car. II. 1678.

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THE Indictment sets forth, " That whereas by
 " the Laws of this and all other well-govern'd
 " Kingdoms, Murder, and the lying in wait with
 " a Design to kill, are most detestable Crimes, and
 " severely punishable, especially when committed
 " against Persons in Authority. And whereas it is
 " enacted by the fourth Act of the 16th Parliament
 " of Jac. 6. That whoever invades any of his Ma-
 " jesty's Council, the Lords of Session, &c. shall
 " be punish'd with Death; and by the seventh Act
 " of the first Parliament of his Majesty's Father,
 " entituled, *Anent the Invading of Ministers*, It is
 " enacted the same shall be extended to all Arch-
 " bishops, Bishops, and Ministers whatsoever;
 " and by the fourth Act of his Majesty's second
 " Parliament, That whoever shall assault the Lives
 " of Ministers shall incur the Pain of Death, and
 " Confiscation of Moveables: And whereas the
 " Mutilation and Dismembring of any Subject is
 " likewise punishable with Death. Nevertheless,
 " the Prisoner having conceiv'd deadly Malice and
 " Hatred against the Right Reverend James, Arch-
 " bishop of St. Andrews, upon Account of his being
 " promoted to be Archbishop, and of his Majesty's
 " Privy Council, &c. did contrive the Murder and
 " Assassination of the said Bishop; and in order
 " thereto having provided himself with a pair of
 " Pistols, did on the 9th Day of July, 1663, or
 " one or other of the Days of the said Month,
 " proceed to execute his purpose, when the said
 " Archbishop in the Afternoon of the said Day
 " came down his Stairs, and was going into his
 " Coach

The Indictment
 for attempting
 to assassinate
 the Archbishop
 of St. Andrews,
 and wounding
 the Bishop of
 Orkney.

" Coach with the Bishop of *Orkney* ; and did feloniously assault the said Bishops, and discharge the said Pistol loaden with Powder and Ball upon them being within the Coach ; and thereby did dangerously wound the said Bishop of *Orkney* in the joining of the Hand and Arm, so that he was mutilate and dismembred, and never perfectly recover'd his Health, but languish'd thereof until he died ; and that after the Prisoner had committed the Fact he escap'd thro' the Crowd, that was gather'd on the Noise of the Pistol, with another bended Pistol in his Hand, determining to have kill'd any that should have attempted to apprehend him. That the Crime was without Parallel, being committed by one of the Reformed Religion, who pretended to serve as a Chaplain in several Families, and committed upon a Father of the Church, to the Scandal of the Reformed Religion, whose Preachers had always express'd the greatest Detestation of such Practices in those of the Church of *Rome*. That the Prisoner being fled, and having wander'd about in *Holland, England* and *Ireland*, return'd to *Edinburgh*, and had the Impudence to keep open Shop there, near the Place where the Archbishop lodg'd, which he continued to do for a considerable time, 'till at length he was discover'd and apprehended, being taken with the same Pistol loaden with Powder and Ball, with which he made the former Attempt upon the Archbishop ; and with which he design'd to have attempted the same again ; or at least to have shot any Person, who should offer to take him ; from which Premisses it was evident he was guilty of Murder and Assassination by way of Forethought, Felony, &c. and therefore the aforesaid Pains ought to be inflicted upon him, to the Terror and Example of others.

Warrant from
the Privy Council
for prosecuting the Prisoner.

Council assign'd
the Prisoner.

Sir *George Mac Kenzie*, his Majesty's Advocate, produc'd his Warrant from the Privy Council for prosecuting the said Mr. *James Mitchell*, the Prisoner.

Mr. *John Elie*, Advocate for the Prisoner, produc'd an Act of the Privy Council, empowering him and Sir *George Lockhart* to be Advocates for the Prisoner.

The

The Prisoner denies the Charge in the Indictment, or any pretended Confession of the Fact alledg'd to be made by him: And Mr. *John Elen*, the Prisoner's Advocate, further urg'd in his Defence, that the Prisoner could not be charg'd with Murder; for that a bare Endeavour, where the thing was not effected, could not be punish'd, as tho' it was actually committed, even in the most atrocious Crimes, except Treason and Parricide: And that it were against all Reason, seeing Punishments ought to be proportionable to Crimes, that a naked and simple Design of Murder should be punish'd as Murder, that had taken effect: That as to the Assassination, which the Indictment charg'd him with, it was both a Term and a Crime unknown to their Law; and the Subjects of *Scotland* are to be govern'd by the Laws of *Scotland*; And tho' the Prisoner might be indicted for Assassination by their Law, yet it was not laid in the Indictment, that he was hir'd to commit the Fact, without which he was no Assassin; and that as to the Mutilation of the Bishop of *Orkney*, the Act does not extend to Mutilation, but dismembring only, and that only where it is done of Malice aforethought: Nor can the Indictment be maintain'd, but where the Party who receives the Hurt, or his next Relation, becomes the Prosecutor; and besides that, Dismembring is not so much as laid, or pretended, in the Indictment: And altho' it were insinuated, that the Bishop died of the Wound, it being not laid, that the Wound was of its own Nature mortal, the Indictment in this Point was insufficient; and especially since it could be prov'd, that the Bishop afterwards went about, and exercis'd his Function, the Prisoner ought to be acquitted of this.

That whereas the Indictment was founded upon an Act of Parliament concerning the invading of Counsellors, it not being laid to be done on Account of the Archbishop's being engaged in his Majesty's Service, the Indictment in that part was insufficient: That as to the Act concerning the invading of Ministers, it was punishable only with Confiscation of Moveables; and as to the Act of 1670, it was made since the Fact committed: That whereas the Indictment

They object, an Endeavour to murder ought not to be punish'd as Murder.

Page 11.

That Mutilation was not Capital by their Laws, tho' dismembring was.

As to the assaulting of a Privy Counsellor, it ought to have been laid to have been done in the Execution of his Office to make it Capital.

The Prisoner's
Confession out
of Court shall
not convict him.

dictment seems to be founded on the Prisoner's Confession, if any such Confession was made (which the Prisoner denies) no Regard ought to be had to it, because the same was extrajudicial, and not in the Presence of the Jury, who are only Judges of the Fact, according to the 90th Act, 7 Parl. Jac. 6. which requires all the Proofs to be made in the Presence of the Jury and the Prisoner; and besides, if any such Confession were, it was made on a Promise of Pardon and Immunity, and therefore ought not to be alledg'd against him.

To this the Lord Advocate answer'd, That he still insisted on the fourth Act of the 16th Parl. of Jac. 6. which makes the bare invading and attempting the Life of a Privy Counsellor to be Capital; and here in this Case the Prisoner proceeded to Action, and did all that lay in his Power; and whereas it was insinuated, that it ought to be prov'd, that he did it for doing his Majesty's Service, that was always to be presum'd, where one attempts the Life of a Privy Counsellor; for his Intentions were no otherwise to be discover'd, than by his Actions, and the Prisoner being unknown to him, could have no other Quarrel against him, than for doing his Duty; and the Law will interpret it so, unless he could shew some other private end he had in committing it; and besides the Presumptions of Law, the Prisoner had own'd himself to be of a Sect, who hates and execrates that Hierarchy; and one of them (*Nephtalie*) had declar'd in Print, it was lawful to kill one of that Character; and the Prisoner himself had asserted it was lawful to kill such, and had endeavour'd to make Profelytes to his Opinion, and had acknowledg'd, that the Reason he shot at the Archbishop was, because he thought him a Persecutor of those execrable Rebels, who appear'd on *Pentland Hills*; and that tho' the last Act was made after the Fact, yet it was explanatory of a former, concerning the invading or attempting the Life of one of that sacred Function: And by the Civil Law *Conatus* and Endeavour is in *Criminibus atrocissimis* punishable by Death: And whereas it is said he is no Assassine, who does not take Money, indeed the Law did not always punish a bare Endeavour,

The Scotch Presbyterians hold it lawful to kill a Bishop.

An Endeavour to assassinate punishable with Death by the Civil Law, unless the Offender can show some Provocation; and it is not necessary to show the Offender took Money to denominate him an Assassine.

deavour, where it was design'd against one, who had offended us, and where Nature might plead some Excuse for our Resentment ; yet where a Person after mature Deliberation should by lying in wait attempt to kill a Person, who never offended him, the Law made it Capital ; and the Circumstance of taking Money was only demonstrative, and not restrictive, since these Criminals are much more dangerous than those who do it for Hire ; for they do it but in Darkness, and where they have a Prospect of Escaping, but the Noon-day Sun and the greatest Concourse of People cannot secure one against these Murderers, who either perswade themselves the Crime deserves Heaven, or that they shall be able to raise a Tumult to bring them off : And as their Law punish'd with Death an Attempt to rob, or ravish, much more so unparallel'd and execrable a Crime.

An Attempt to rob or ravish punishable with Death in Scotland.

And whereas it was alledg'd the Prisoner confess'd upon Hopes of Life, it was answer'd, that a Promise of Life from a Judge, who could not grant it, would not avail him, especially where no Threatnings were us'd, and the Fact was plainly prov'd by other Circumstances ; and he could not shew that he made this Confession expressly upon that Contract, that his Life should be spar'd ; and in the Civil Law where the Party confess'd spontaneously, tho' Life were promis'd, it would not avail the Criminal.

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A Promise of Pardon by a Magistrate who cannot grant it, of no Avail.

Whereas it was objected the Confession should not be allow'd as Evidence, being taken before an incompetent Judge, it was answer'd, that Confessions are of all Proofs the most infallible ; for it could not be presum'd the Party would wrong himself : And tho' a Man might think it hard, that what he had said inadvertently, or in ordinary Discourse, should be made Evidence against him, yet what can he object, where he deliberately confesses, when he knows the Design is to enquire into the Crime, in order to bring him to Tryal ? And further, that indeed this Confession was judicially taken, being by Authority of the Privy Council, the supreme Judicatory of the Nation, who can take Cognizance of Criminal Matters, and moderate and qualify the Sentences of inferior Courts ; and the

The Party's Confession the strongest Evidence against him.

the greatest part of the Justices of the Criminal Court being there, it were absurd to think, that a Confession made before them should not be Evidence : And that the Sense of the Act of Parliament mention'd was grossly mistaken ; for Confessions before the Justices are allow'd to be Evidence against the Criminal, tho' no Jury be present.

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That he does not insist upon the Act of 1670, concerning the attempting of the Life of a Bishop or Minister, but upon Mutilation as Capital, upon the Act concerning Demembration ; for that a Man is as much dismembred, when his Hand is rendred useles, as if he had no Hand : And on the 28th Act, 3 Jac. 4. wherein Slaughter and Mutilation upon Malice aforethought are both made Capital.

Sir George Lockhart, for the Prisoner, reply'd, that the Indictment could not be supported by the Act concerning the assaulting a Privy-Counsellor, for that extended to all his Majesty's Officers ; and it could never be intended, that an Assault upon a Herald, or such like mean Officer, should incur the Pain of Death : And that Act had expressly provided, that the Officer be assaulted for doing the King's Service to make it Capital, and so the Crime was deem'd to be committed directly against his Majesty's Authority, which he was then executing ; and this Circumstance, *that it was for the doing his Majesty's Service*, is not so much as laid in the Indictment. And whereas it was said, the Criminal's Design could be no otherwise prov'd than by Conjecture and Circumstances, it was true, where one assaults an Officer actually engaged in his Majesty's Service, there indeed he shall not be permitted to say he had no such Design ; but the doing his Majesty's Service was a Fact, which might be prov'd by outward Action, and may and does often happen ; as where a Judge is upon the Bench, and the like ; and there indeed on an Assault, or bare Attempt, tho' no Wound follow, the Crime shall be deem'd consummate ; and that this being the plain Meaning of the Act, and it being a Penal Statute ought not to be extended beyond the Words : And whereas 'tis said, it lies upon the Prisoner to prove he had some other private Reason for committing this Fact, they

Page 72.

they insisted, that it lay upon the other side to prove he assaulted him for doing his Majesty's Service.

January 9, 1678. The Court being set, and the Lords Commissioners of Justiciary having considered the Indictment, and the Arguments thereupon, find that the Article in the Indictment, founded on the fourth Act of the 16th Parliament, *Jac.* 6. importing the Prisoner's assaulting the Archbishop, being a Privy-Counsellor, by firing a Pistol at him, for doing his Majesty's Service, was sufficiently supported; it being prov'd, that the Prisoner said he made that Assault upon the Archbishop for his persecuting those who were in Rebellion at *Pentland*.

Page 78.

That as to the Article concerning the assaulting Bishops and Ministers, they find it only infers an arbitrary Punishment.

As also that other Article, concerning the mutilating the Bishop of *Orkney*, only infers an arbitrary Punishment.

As to the Prisoner's Confession made before a Committee of Council appointed to receive it, and renew'd in Presence of his Majesty's High Commissioner and Lords of the Privy-Council, they find it to be judicial, and cannot be retracted.

Page 79.
The Court of Opinion, that is appear'd the Prisoner made the Attempt on his Grace for doing his Majesty's Service.

And as to the same being made on a Promise of Life, or Impunity, they find the same sufficient to secure the Prisoner's Life, provided it be proved; reserving to the Court nevertheless a Power of inflicting such arbitrary Punishment, as they shall think fit, if the same be prov'd; and refer the Proof of this and the other Facts to the Jury.

That his Confession before the Council could not be retracted, but if it were prov'd to be on a Promise of Life, the Prisoner should have the Benefit of it.

Then a Jury consisting of fifteen were sworn; and his Majesty's Advocate produc'd the Prisoner's own Confession, (*viz.*)

Edinburgh 10. 1674. In Presence of the Lord-Chancellor, Lord-Register, Lord-Avocate, and Treasurer-Depute, Mr. James Mitchel Prisoner, being call'd, did freely confess, he was the Person who shot the Pistol at the Archbishop of St. Andrews, when the Bishop of Orkney was hurt thereby in the Year 1668, and depones upon Oath, that no living Creature did persuade him to it, or was upon the Knowledge of it.

The Prisoner's Confession.

Mr.

The Evidence
against the
Prisoner.

Mr. William Paterson being produc'd as a Witness depos'd, That he met a Man with a Pistol in his Hand in *Black-fryer Wynd* immediately after the Pistol was shot at the Archbishop, but knows not the Prisoner, or if he was the Person that shot it.

Patrick Vause, Keeper of the *Tolbooth*, depos'd, That a Day or two before the Prisoner was examin'd by the Council, he confess'd to the Deponent, that he shot a Pistol at the Abp. of *St. Andrew*, and escap'd down *Black-fryer Wynd*, and that he afterwards return'd into the Street, and pretended to search for the Man who shot the Pistol.

John, Bishop of *Galloway*, deposes, That hearing the Prisoner had made a Confession, he went to the Prison to speak with him about it; and he acknowledg'd to the Deponent, that he had confess'd the Attempt against the Archbishop before the Chancellor and some others of the Council, and that he had Hopes of Life, and desir'd the Deponent to intercede for him. And the Deponent asking him how he could do such a Deed against an innocent Man, he answer'd, he thought him an Enemy to the Godly, and that they could not be in Security, so long as he was alive; but he said, if it were to do again, he would not do it.

Dr. Irwin the Surgeon depos'd, That he was the first Surgeon, who came to the Bishop of *Orkney*, and saw the Ball fall out of his Sleeve, and the Bones were fractur'd with it, but he was so well cur'd he was able to lift his Hand towards his Head; and the Bishop said, he got the Wound as he was laying his Hand on the Archbishop's Coach; and that small Scales of Bones continued to come out of the Orifice of the Wound.

John Jossie and *William Brothwick*, Surgeons, depos'd to the same Effect.

The Ld. Chan-
cellor deposes,
no Promises of
Life were made
the Prisoner on
his Confession.

John Earl of Rothes, Lord High-Chancellor, depos'd, That he was present, and saw *Mitchel* sign the abovesaid Confession, and heard him ratify the same afterwards at the Council Board; and further deposes, that he did not give the Prisoner any Assurance of Life, nor did he desire any such Assurance; and if there be any Expressions in a Paper, that

that seem to infer this much, his Lordship conceiv'd they had been insert'd upon some Mistake.

Charles Maitland, Lord-Treasurer Depute, depos'd to the same Effect; and added, that the Prisoner being ask'd upon what Account he committed that Fact, he seem'd at first unwilling to answer; but afterwards said, it was because the Archbishop was an Enemy to the Godly People in the West; and that there was no Assurance of Life given the Prisoner, when he was before the Committee.

John Duke of Lauderdale depos'd, That he saw the Prisoner acknowledge the above-said Confession; and that he renew'd the same before the Council.

James Archbishop of St. Andrews depos'd, That that Day the Prisoner fir'd a Pistol at his Grace he had a View of him, passing from the Coach and crossing the Street, which made such an Impression upon his Grace, that upon the first Sight of him, after he was taken, he knew it to be the Person who made the Shot; and further, that he saw the Prisoner acknowledge his Confession at the Council-Table; and that there was no Assurance of Life given him there; nor did his Grace ever give him any, or warrant any Body else to do it, only he promis'd at his first apprehending, that if he would freely confess the Fault, and express his Repentance without further troubling Judicatories therein, he would use his best Endeavour to favour him, or else leave him to Justice.

Then the Prisoner desir'd a pretended Act of Council, the Copy whereof he produc'd, might be read; from whence he would infer there was an Assurance of Life given him. The Lord-Advocate oppos'd it, saying, no such Act could be made use of, (if there was any) after my Lord-Chancellor, my Lord *Lauderdale*, and the rest of the Council, had depos'd, there was no such Assurance given. But at length the Lord-Advocate did consent to the reading of it.

In which Act were Words to this Effect; " That
" the Prisoner upon his Examination denied that
" he was the Person who made the Attempt, 'till
" having retir'd a Pace with one of the Committee;
" he did confess upon his Knees, that he was the
" Person,

An Act of
Council con-
cerning his Con-
fession.

" Person, upon Assurance given him by one of the
" Committee, as to his Life, who had a Warrant
" from the Lord-Commissioner and Council to grant
" the same; and afterwards did confess freely be-
" fore all the Lords of the Committee, that he shot
" the Pistol at the Archbishop, and subscribed his
" Confession in the Presence of the said Committee;
" which was also subscribed by them; and after-
" wards before the Council the Prisoner renew'd
" the same: But being brought before the Lords
" Commissioners of Justiciary; and ask'd if he own'd
" the Confession aforesaid, he refus'd to answer and
" adhere to his said Confessions, tho' he was told
" by the Lords of Justiciary and his Majesty's Ad-
" vocate, that if he would adhere to his Confes-
" sions, he should have the Benefit of the said As-
" surance, and if not, he should lose it; therefore
" the Lord-Commissioner and the Lords of the
" Council do declare that they are free, and the
" said Mr. James ought not to have the Benefit of
" any such Promise or Assurance, but the same is void.

Page 12.

The Lords of Justiciary considering that this pre-
tended Act was never urg'd or made use of before
the Jury was sworn, which it must have been by
the Course of the Court, if the Prisoner expected
any Benefit by it; and that the Design of it seems
to have been to deprive the Prisoner of any Promise
or Assurance he might have pleaded; and that the
Assurances pretended to be given in this Copy were
false, as appear'd by the Depositions of the Lord
Lauderdale, the Lord-Chancellor, &c. it was rejected
by the Court, and the Jury were order'd to with-
draw, and bring in their Verdict at two in the Af-
ternoon the next Day.

The Verdict as
to the several
Facts.

Jan. 10, 1678. The Court being set, the Jury
brought in their Verdict, viz. As to the first part
of the Libel, founded on Act 4. 16 Parl. Jac. 6.
concerning the Assaulting or Attempting any of the
Lords of Session, Privy-Council, &c. the Chan-
cellor [*i. e.* the Foreman] and the whole Assize
[the Jury] with one Voice find it proved.

As to the Invading of Bishops and Ministers, and
wounding the Bishop of *Orkney*, they likewise find
it prov'd with one Voice.

As

As to his Confessions, they likewise find them prov'd with one Voice.

Lastly, as to the Prisoner's Exculpation, (or Defence, in relation to the Assurances given him of Life) the whole Assize with one Voice find it no ways prov'd.

Sic subscribitur

JO. HAY, Chan.

After opening and reading which Verdict, the Court adjudg'd, That the Prisoner should be taken to the Grasse-Market of Edinburgh on Friday the 18th of January, and there be hang'd on a Gibbet, 'till he was dead, and his moveable Goods and Gear to be Escheat to his Majesty's Use.

The Court
passes Sentence
of Death upon
the Prisoner.

The Tryal of the Lord CONWALLIS for
Murder,

31 Car. 2. 1679.

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THE Prisoner, Charles Lord Conwallis, was indicted for Murder by the Grand-Jury of the County of Middlesex; "for that he, together with "one Charles Gerrard and Edward Bourne, upon the "18th of May last, did feloniously, and of his "Malice forethought, make an Assault upon the "Person of one Robert Clerk, in the King's Palace "of Whitehall within the said County; and that "the said Gerrard took up the said Clerk in his Arms, "and flung him down, and broke his Neck, of "which he instantly died; the said Lord Conwallis "being present, and aiding and abetting the said "Charles Gerrard, and so Principal in the said Murder, against the King's Peace, &c.

The Indictment
for Murder.

The Court being set, the Commission read, and the Lords Tryers call'd over, the Prisoner was set to the Bar, and the Lord High-Steward made a short Speech to him, directing him as to his Behaviour upon his Tryal. Then the Indictment being read, and the Prisoner arraign'd, he pleaded Not Guilty. After which the Lord High-Steward address'd himself to the Peers, and shew'd them the great Advantages they had in this manner of Tryal above their Neighbour-Nations: That it was not created, but acknowledg'd by the Great Charter,

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The Ld. High-
Steward's
Speech.
He shews,
The Antiquity
of Tryals by
Peers.

and was as antient as the *Saxon* Monarchy, as appear'd by the Tryal of *Godwin*, Earl of *Kent*, who was try'd by Earls and Barons ; and that it was probably introduc'd by the *Romans* ; among whom for a considerable time it was unlawful for any one to sit in Judgment upon a Senator, who was not himself a Senator : And that as this Privilege was as antient as the Monarchy, so Experience shew'd, it could not be taken away, but the Dissolution of the Government must succeed ; and that the Peers were bound in Interest as well as Duty to the Service of their Sovereign.

That he knew their Lordships would weigh the Fact with all its Circumstances, whereby it was to receive its true and proper Doom : That they would not be mov'd by Pity on one side, or Rhetorick on the other ; and he thought it necessary only to observe, that the fouler the Crime was, the plainer the Proof ought to be ; and that no other good Reason could be given, why the Law did not allow a Prisoner Council, as to Matter of Fact, where his Life was concerned, but because the Evidence, by which he is condemned, ought to be so plain and evident, that all the Council in the World should not be able to answer it.

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Sir Wm. Jones.

The Fact stated
by Mr. Attorney.

Then Proclamation was made for Evidence, and Mr. Serj. *Maynard* opened the Indictment ; after which Mr. Attorney-General (*Sir William Jones*) opened the Evidence, and shew'd, That on the 18th of May last, between one and two in the Morning, the Lord *Conwallis* and Mr. *Gerrard*, with three Footmen behind them, came out of the Gallery at *Whitehall* down the Stairs into the Park ; and demanding of the Centinel at the Foot of the Stairs the Hour of the Night, he told them ; but they being disorder'd with Drink with many great Oaths replied, that he ly'd, and went by him into the Park. About an Hour after they return'd to the Stairs, and the Centinel demanding who came there, they answer'd him in very obscene and rude Language, and threaten'd they would kill him ; but the Centinel kept them off ; then one of them gave away his Sword, and swore he would kiss him, which the Centinel refus'd, and then they threaten'd him

him again, and seem'd to be in a Contention who should run him thro' ; but at length being gone up to the Top of the Stairs, there came two young Lads to the Centinel, and one of them desir'd the Centinel to call him early next Morning ; my Lord *Conwallis* and Mr. *Gerrard* being at the Top of the Stairs, and hearing it, seem'd concern'd they should command the King's Soldiers, and bid the Centinel shoot him, and they would bear him out, which the Centinel refus'd to do. [N. B. *Either one or both of them had sworn, that before they went away, they would kill some body, or other.*] They again call'd to the Centinel to shoot him, but he still refusing, one of them swore a great Oath, he would kick his Arse to Hell, to which the Boy that spoke to the Centinel made some Reply, wherein the Word *Arse* was repeated ; whereupon one of the Gentlemen in a Rage run down the Stairs, and the Boy who spoke it run away, but the other remaining there, the Gentleman seiz'd upon him, and tho' the Boy cried out, *O my Lord, it was not I ; indeed, my Lord, it was not I*, such was the Fury of the Person who came down, that either by a Blow, or by throwing him upon the Ground, he kill'd him.

The Centinel prov'd the Fact to be as Mr. Attorney opened it, but the Evidence agreed, that it was Mr. *Gerrard* who actually kill'd the Boy, and that my Lord remain'd at the Top of the Stairs ; but which of them it was that said they would kill some Body or other before they went away, the Evidence could not be positive, it being dark.

The Boy that spoke the Words, that gave the Offence, depos'd, That he only said, *Why kick my Arse to Hell?* However the Gentlemen happen'd to mistake his Words.

My Lord *Conwallis*'s two Footmen, who had been indicted and acquitted at the King's Bench Bar, were also produc'd as Witnesses ; and the Lord High-Steward demanded of the Judges, whether one who had been indicted and acquitted of the same Offence, might not be a Witness ; to which they answer'd, he might. These depos'd, that it was Mr. *Gerrard* that committed the Fact, and that my Lord remain'd on the Top of the Stairs, but

Persons indicted
for the same
Offence, and ac-
quitted, good
Witnesses.

run away so soon as it was done, for fear of being knock'd down by the Soldiers.

My Lord's Defence.

My Lord *Conwallis* acknowledg'd he was in Company with Mr. *Gerrard* that Night, but that he had no ill Intention; and that there was but one Witness, who depos'd, that both of them said they would kill the Centinel; that he was not conscious that he had any Hand in this Murder, and therefore did not withdraw himself, but surrendred himself to the Coroner the next Day, and trusting to his Innocence, he now submitted himself to the Judgment of his Peers.

The Council urge, that my Lord being present, and not shewing he either disapprov'd or endeavour'd to prevent the Murder, ought to be deem'd guilty of it.

Page 248.
That where many are engag'd in an unlawful Design, and one of them murder a Man, the rest are guilty, tho' at a distance.

Mr. Solicitor observ'd, that both my Lord and Mr. *Gerrard* had a murderous Intention, both of them swearing they would kill the Centinel; and as to the Murder that was actually committed, my Lord was present, and had not given any Proof that he disapprov'd or endeavour'd to prevent it, which he said amounted to as much in Law, as if he had struck the Stroke.

Mr. Serj. *Maynard* urg'd, that my Lord's being at a Distance would not excuse him, if he was in the Design, and quoted my Lord *Dacres's* Case, who went to steal Deer; and my Lord and some of the Company fled upon the Coming of the Keeper, and afterwards the Keeper was kill'd, my Lord *Dacres* being at that time without the Pales, and a Mile's Distance from the Place; and yet he was adjudg'd to be guilty of the Murder.

The Prisoner being taken from the Bar, and the Lords Tryers withdrawn to consider of their Evidence, after two Hours the Lords Tryers return'd to their Seats; and having a point of Law to propose, the Lord High-Steward acquainted them, that the later and better Opinion was, that the Question should be put in the Presence of the Prisoner, that he might know whether it was justly stated, (tho' it had sometimes been practis'd otherwise, and the Peers had sent for the Judges, and ask'd their Opinions in private.)

Where any Question in point of Law occurs, it ought to be put in the Prisoner's Presence.

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Then the Prisoner was brought to the Bar again. And the Question was propos'd to the Judges, (viz.) Whether those who are present, and have contributed to any Disorders, whereupon a Man-

slaughter

DAVID LEWIS, a Jesuit. An. 1679.

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slaughter ensues, are as guilty of Manslaughter, as he who is actually the Manslayer? as it is in Murder, where all who are guilty of the Trespass which occasions it, are deem'd equally guilty with him who commits the Fact.

Many Persons doing an unlawful Act, where, by a Manslaughter ensues, all who were engaged in that unlawful Act are as guilty as the Manslayer.

The Judges answer'd, the Case was the same in Manslaughter, as in Murder.

Then the Lords withdrew again, and after a short Recess return'd, and six of them found the Prisoner Guilty of Manslaughter, but the rest acquitted him.

Then the Lord *Corwallis* being set to the Bar again, My Lord High-Steward acquainted him, that his Peers had acquitted him, and that he was discharg'd.

The Prisoner is acquitted.

After which my Lord High-Steward broke his Staff, and dissolv'd the Court,

The Tryal of DAVID LEWIS, a Jesuit, for High-Treason, at Monmouth Assizes, the 28th and 29th of March, 31 Car. II. 1679.

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THE Indictment set forth, " That the said David Lewis, being a natural Subject of the King of England, had gone beyond the Seas, and taken Orders from the Church and See of Rome, and had return'd back into England, and continued here upwards of 40 Days, contrary to the Statute in that Case made and provided, viz. 27 Eliz. cap. 2.

The Indictment for High-Treason, in carrying into Popish Orders.

To which Indictment the Prisoner pleaded Not Guilty. Then the Jurors were call'd, and after several had been challeng'd as well by *Arnold* the Prosecutor for the King, as by the Prisoner, twelve were sworn. After which the King's Witnesses were call'd, and first

William Price was sworn.

Mr. J. *Atkins*. What have you to say to the Prisoner?

Price. About a Year and Half since, I heard him read Mass at Mr. *Bartlett's* House, call'd *Castle-Morton* in *Worcestershire*, and I was at Confession with him, and receiv'd the Sacrament of him after their Way: I was of that way 18 Years myself, but am now a Protestant.

Evidence of the Prisoner's saying Mass, and performing the other Functions of a Priest.

Mr. J. *Ask*.

The TRYAL of

Mr. J. Atk. Was there any Altar, Crucifixes, or Copes?

Price. Yes; there were.

Dorothy James was sworn.

Dor. James. I heard him say Mass, and take Confessions, and have seen him give the Sacrament, marry, christen, and preach both in *English* and *Welsh*; and there were Altars, Chalice, Crucifixes, and other things belonging to that way: And I saw him give my Uncle extream Unction, anointing him with Oil and he had eight Pounds in Silver, and a Piece of Gold of me to free my Father's Soul out of Purgatory.

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Prisoner. God is my Witness, I never receiv'd a Penny of Money either of her or her Husband.

William James was sworn.

He depos'd, That he had seen the Prisoner read Mass many times, and take Confessions, give the Sacrament, christen, and marry.

Mr. Trott was sworn.

He depos'd, That the Prisoner was reputed a Popish Priest, and that he had heard him read Mass, and saw him marry Mr. Gunter's Daughter to one Mr. Body.

Mr. Sayes was sworn.

Popish Utensils
taken upon him.

He depos'd, That he was employ'd with others to search for the Prisoner on *Novemb. 16. last*, and that they took him with several Popish things in his Custody.

John James was sworn, and depos'd, That the Prisoner married him and his Wife.

Catherine Thomas depos'd, That she had heard the Prisoner read Mass.

The Prisoner
objects, the
Facts in the In-
dictments were
not prov'd.

Prisoner. I am indicted on the 27th of *Eliz.* for that being a natural-born Subject I was ordain'd beyond the Seas by a Jurisdiction deriv'd from the See of *Rome*, and returning back into *England*, &c. Now I conceive, that none of the Witnesses have prov'd any of the Facts laid in the Indictment.

The Court an-
swer, it was suf-
ficient to shew
he exercis'd the
Office of a
Priest, and that
it was not neces-
sary to shew
how he was or-
dain'd.

Mr. J. Atk. Do you expect we should bring Persons to prove they saw you ordain'd? It is enough that you have exercis'd the Function of a Priest in Copes and Vestments used in your Church, and that you have read Mass, taken Confessions, given Absolutions, married and christen'd; I have try'd se-
veral

veral Popish Priests, but never saw so full a Proof as this.

Prisoner. None can prove I have read Mass, unless he first prove I was ordain'd by an Authority deriv'd from the See of *Rome*; for if there were no Ordination, there could be no Priest, and if no Priest, then no Mass; and as for Confessions and Absolutions they are perform'd by the Ministry of the Church of *England*, and many, in Cases of Necessity, christen, tho' no Priests; and it is well known in the Country, that one who was no Popish Priest lately solemnly married a Couple: Besides, my Lord, I am inform'd, that the reading Mass is not Treason, and that the Offender is only subject to a Forfeiture of 200 Marks.

Mr. J. *Atk.* He who hears Mass indeed only incurs a Forfeiture of 100 Marks by the 23d *Eliz.* But he that uses to read it, is guilty of High-Treason.

N. B. The 23d of *Eliz.* says, he that reads Mass forfeits 200 Marks, and he that hears it 100.

Prisoner. I desire to speak a Word or two to the Evidence that has been given. As to *Price*, I don't remember I ever saw him to this very Day, or ever heard 'till now there was such a House as Mr. *Bartlett's*, or such a Place as *Castle-Morton*; nor was I ever above twice in *Worcestershire*.

Mr. J. *Atk.* Mr. *Price*, Do you know the Prisoner?

Price. Yes, my Lord; this is the Man.

Prisoner. As to Mr. *Trott*, he was married to a Kinswoman of mine of a considerable Fortune, which he having foolishly squandred away, she died, and he procur'd himself an Employment at Court; where having done some unhandsome things he was banish'd the Court; and being reduc'd to great Necessities, in Hopes of Gain he appears against me.

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Mr. *Just. Atk.* Little Gentleman, what say you to this? [He was a Dwarf.]

Mr. *Trott.* My Lord, I was over with the King, and upon the Restoration he order'd me to attend him at *Whitehall*. I was not banish'd the Court, but came away upon some Discontent. I desire to do my King and Country Service, but am in Danger of my Life amongst them, and must look to myself.

Mr. J. *Atk.* Ay, Mr. *Trott*, you do well to have a Care of your self.

Prisoner.

STATE TRIALS.

Prisoner. My Lord; as to the Evidence of *Dorothy James* and *William James* her Husband, it is founded on Malice; for not being able to prevail against me in a Suit in Chancery, the Woman vow'd she would never leave prosecuting me, 'till she had wash'd her Hands in my Heart's Blood, and made Pottage of my Head. This the *Prisoner* prov'd by four Witnesses.

Mr. J. Atk. But all this does not excuse your being a Priest: Have you any more to say? The *Prisoner* answering he had not, *Mr. Just. Atkins* sum'd up the Evidence that had been given: After which the *Prisoner* desir'd he might have Liberty to produce other Witnesses to invalidate *Mr. Price's* Testimony; and the Court consenting to it, he call'd *Elizabeth Jones* and *Charles Edwards*, who depos'd, that they heard *Price* say this very Morning the *Prisoner* came to his Tryal, after he had view'd him in his Chamber, that if the *Prisoner* was the Man, he was much chang'd, and that he had black short Hair curl'd, which was not so then.

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The *Prisoner* is convicted.

Sentence pass'd.

The Jury withdrew, and soon after return'd into Court with their Verdict, that the *Prisoner* was Guilty.

And the usual Sentence in High-Treason was pronounc'd upon him.

The End of the First Part of the
SECOND VOLUME.

